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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1992

COY RAY PHELPS, 78872-011,

Petitioner,

v.

R. H. RISON, Warden of the Federal Prison at Springfield Missouri, *et al.*,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

U. S. District Court at Springfield, Missouri Habeas Corpus and Civil Case No: 91-3242-CV-S-RGC-R

U. S. Court of Appeals for the 8th Circuit Appeals Case No: 92-1853

PETITION FOR A WRIT OF CERTIORARI

COY R. PHELPS, 78872-011
Pro Se
P. O. Box 4600
Rochester, Minnesota
55903-4600

THE REPORTER COMPANY, INC.—Walton, NY 13856—800-252-7181
Syracuse Office, University Building, Syracuse, NY 13202—315-426-1235
NYC Office—30 Vesey St., New York, NY 10007—212-732-6978—800-800-4264
(S2328—LC7-182—1992)

Questions Presented

1. Is it a Constitutional violation, and a denial of equal rights and equal protection, to force a person who is insane, or who was insane at the time a crime was reported to have been committed, to stand trial for that crime, when it is prohibited by law to require an incompetent person to stand trial for a crime?

2. When a person has raised the issue of insanity as a defense, is it a constitutional violation, and a denial of equal protection/justice, for a decision making judge, or jury, to judge both the insanity issue of a case and the merit of the case when the person who raises the defense of incompetence is accorded a bifurcated hearing with separate decision makers?

3. Whenever the issue of insanity is raised as a defense in a proceedings, should the court stop the proceedings, order a psychiatric assessment by neutral decision, appointed by the court, allow counsels to present their own experts, have an evidentiary hearing on the insanity issue before the proceedings continue?

4. Whenever it has been determined that a person was insane at a time when a crime was reported to have been committed, should the person be released from the charges?

5. At an evidentiary hearing in which the issue of insanity is argued, should the only question be ask be "was this person insane from a certain period of time to a certain period of time" without introducing evidence of the crime or the nature of the crime which would unreasonably influence the neutral decision makers?

6. Is it a constitutional violation, and a denial of equal protection, to require an involuntary civilly committed insanity acquittee to exhaust administrative remedies to challenge the legality of commitment when exhaustion of administrative remedy is not required of convicted prisoners who are challenging the legality of their convictions?

7. Is it constitutionally permissible, under the statutory provisions of 18 USC 4243 and 4247 (regarding the insanity acquittee) to incarcerate, or to imprison, an insanity acquittee in a jail, reformatory, prison, penitentiary, correctional institution, or any other similar penal or correctional facility, for an indeterminate period of time, to suffer and endure the same (or worse) burdens, hardships, liabilities, restrictions, deprivations, disciplines, and punishments as convicted prisoners under a legal sentence of punishment?

8. Does the Federal Bureau of Prisons have the authority to receive custody and to imprison an insanity acquittee under the provisions of 18 USC 4001, 4042, 4081, or any other statutory authority?

9. Does the United States Attorney General have the authority, under the provisions of 18 USC 4102, or any other statutory authority, to confine an insanity acquittee in a jail, prison, or any similar penal or correctional facility?

10. Are the Federal Institutions and facilities at Rochester Minnesota, and at Springfield Missouri, and at Butner North Carolina, and at Lexington Kentucky penal and correctional facilities with penological interests and objectives with medical capabilities, or are they "hospitals" with security capabilities?

11. Are penal and correctional institutions the "suitable facilities" contemplated in the statutes 18 USC 4243 and 4247?

12. Under the provisions of 18 USC 4247(i), must the "suitable facilities" be certified by the Secretary of Health and Human Services as a "hospital" facility?

13. Was the intent of congress to "Hospitalize" the insanity acquittee in a general mental hospital setting for care, treatment, healing, recovery, and rehabilitation, or to "imprison" the acquittee in a prison for deterrence, retribution, discipline, and punishment?

14. Are the words and phrases "substantial risk," and "serious threat" in the statutes 18 USC 4243 and 4247 words which represent "dangerousness?"

15. According to the provisions of 18 USC 4243 and 4247, do the words "due to" mean that the mental illness aspect is inseperable from the "dangerousness" aspect so that if the concept of "dangerousness" is eliminated from the statutes, then the mental illness is automatically excluded by nullity?

16. Does 18 USC 4243(g) impose criminal sanctions and liabilities upon the insanity acquittee?

17. Is the decision of this court in *Foucha v Louisiana*, issued on May 5, 1992, applicable to federal insanity acquittees pursuant to 18 USC 4243?

18. Does the decision of this court in *Foucha v Louisiana*, issued on May 5, 1992, automatically void the mental illness issue in 18 USC 4243 because of the "due to" word phrase in the statute?

19. Does the statutory provisions of 18 USC 4247(g) negate the abuse of writ principle and the *res judicata* doctrine of the insanity acquittee challenging the legality or illegality of his detention or confinement?

20. Have the statutes 18 USC 4001, 4042, 4081, 4243, and 4247 been misapplied to this insanity acquittee?

21. Has the statute 18 USC 4242 been misapplied in that it has not allowed a person to plead a proper plea regarding insanity?

22. Does the "Petition" clause of the First Amendment to the U. S. Constitution permit a person to sue (petition) the Government (federal government) for money damages (redress) for the wrongs suffered (for grievances)?

23. Does the word "territory" in the Civil Rights statute 42 USC 1983 include federal prisons, American Indian Reservations, Military Bases and Outposts, U. S. Embassies, Vessels at sea, in the air, or in outer space?

24. Are the statutory provisions of 42 USC 10841 made substantive rights by the statutory provisions of 18 USC 4081 and other provisions which require individualized care and treatment?

25. Are law, rules, regulations, and policies enacted and established to be enforced only against those "accused" of crimes and those "convicted" of crimes also enforcible against those acquitted of crimes?

26. Are insanity acquittees to be treated according to the rules and regulations appropriate to mental institutions, or rules and regulations established for prisons and other penal and correctional facilities?

27. Under the provisions of 18 USC 4243 and 4247, and the expectations of a humane society, what minimum level, status, or condition of mental illness, disease, defect, or disability is required before a person must suffer a loss of liberty, property or opportunity?

28. Is the United States Federal Government distinctly different from the Republic of the United States?

29. Is the United States Federal government a corporate organization established by the Republic of the United States to administer, manage, and operate the business of the Republic?

30. When the United States Federal government is given the authority to sue others in a court of law, is the Federal government then automatically open to be sued?

31. Is the sworn oath of office taken by a public official and government employees binding upon those officials and employees for the purpose of legal liability?

32. Are the established, accepted, and published code of ethics, or canons of professional conduct and responsibility, or standards of behavior made for a specific profession binding upon the members of that profession such that a violation would make the violator subject to liability?

33. Does an involuntarily committed person have the right, before death, to prevent the government from performing, conducting, or authorizing an autopsy, or post-mortem surgery, operation, mutilation, test, or experiment, upon his own body after he dies, and to require that his body be processed and disposed of in a manner consistent with his sincerely held, and culturally shared, religious beliefs?

34. Does Article 4, Section 2, of the U. S. Constitution provide that the greatest right, privilege, protection, and immunity given to a citizen in one State shall be available to the citizens in all States, as well as providing that the rights given to the collective citizens shall be given to the individual citizen?

35. Is it constitutionally permissible for the U. S. Federal government to aid, assist, support, or to condone any person, agency, business, or organization whose goals and purpose is to violate the articles of federal statutes 18 USC 1091-1093?

36. Is it permissible for a court to exclude, alter, or substitute parties in an action without affording the complainant due process and an opportunity to argue the act?

37. Is it permissible for a court to refuse to accept a filing fee and a docketing fee from an applicant, and then initiate an "in forma pauperis" application on behalf of the applicant (on its own initia-

tive and without the approval of the applicant, and then dismiss the case under the provisions of the "in forma pauperis" provisions?

38. Is it permissible for a United States District Court judge to prevent access to the United States Supreme Court and then assert that he will make a ruling on the case for the United States Supreme Court, without the knowledge or approval of the U. S. Supreme Court?

39. Is it permissible for a U. S. District Court judge or magistrate to allow the court clerk to "rubber stamp" his signature on legal documents without the judge or magistrate reviewing the document or knowing its content?

40. Can the "hands off" policy of the courts, regarding the administration and management of institutions, constitute a deliberate indifference liability and a constitutional violation?

41. Can the "inaction" of a court constitute being embroiled and entangled in the administration and operation of an institution?

42. When the clerk of the court refuses to process documents in accord with the rules of the court, and such action is condoned by the court, is the clerk and the court liable for the damages suffered?

43. Are government employees, who have taken a sworn oath of office, subject to removal from employment through the impeachment process?

44. Are labor organizations (unions) "joint employers" when it has entered into a binding contract with an employer and the terms of the contract affects the conduct of the employee while working for the employer?

45. Is a labor union, whose members are also employees of an employer who has been named in a law suit, jointly liable for the

acts and actions of the employees when the employee has violated the rights of another and is named in the law suit?

46. When the statutes 18 USC 4243 and 4247 mandate an annual review and a report to be submitted to the court, and the government agency refuses to conduct a review or to submit a report, is the agency subject to liability?

47. When the harm and injury suffered by a person is an ongoing and continuing violation committed by different agencies of the federal government, may a law suit be brought against all parties (in various districts) in one district when the U. S. Federal Government is the real party of interest in all the incidents and violations?

48. Does a civilly committed insanity acquittee have the right to review all his own medical records and all other records regarding him which is maintained by an agency, or organization, having custody or authority over him?

49. Is it constitutionally permissible to multiple house or to double house mentally ill or mentally disabled people when it is evident, or is suspected, that one or more occupants of the room, or cell, is dangerous, or confrontational, or violent, or unpredictable, or psychologically unstable and unmanageable, or psychotic, or irrational, or disruptive, or disoriented?

50. Is the client of an attorney the owner, or joint owner, of the documents, information, data, material, and evidence obtained and collected by the attorney in the preparation, processing, and disposition of the case of the client?

51. Did the U. S. District Court and the U. S. Court of Appeals err in not allowing the complainant to separate the cases and complaints which the U. S. Magistrate had determined to be improperly joined?

52. Did the U. S. District Court err in dismissing the case as being "frivolous" when it had admitted that some of the issues were meritorious, and did not afford the complainant the opportunity to argue the issues?

53. Did the U. S. District Court and the U. S. Court of Appeals err in not appointing a counsel to aid, assist, or to represent the complainant when the courts knew that the complainant was an insanity acquittee, and the issues had merit, and it would have been suspected that the complainant would not be able to present articuable facts nor to adhere to legal procedures for a long duration?

54. When the statutes mandate an annual review of an insanity acquittee to determine eligibility for release, is it a violation of the 5th amendment to the U. S. Constitution to repeatedly use the crime and nature of the crime, in each successive reviews, to keep the insanity acquittee confined?

55. Is it a violation of the due process and self-incrimination clauses of the 5th amendment to keep an insanity acquittee in confinement unless he reveals unknown aspects of his personality and characteristics, and then keep the acquittee confined based upon the revealed information?

56. Is it constitutionally permissible to keep an insanity acquittee, or a mentally disabled person, confined based upon the information obtained from psychotherapy interviews when the information is not a crime, nor related to his crime or the nature of the crime?

57. Is it constitutionally permissible to keep an insanity acquittee in confinement for refusing to discuss aspects of his history, or previous conduct, which were not related to the crime or the nature of the crime?

58. Is it constitutionally permissible to construct a psychological test, experiment, or interview in which questions are asked regarding race, religion, sexual gender, sexual orientation, age, mental or

physical handicap, color of skin, national origin, political ideologies, shared cultural beliefs, philosophical ideologies, and then deny the person life, liberty, property, or opportunity based upon the answers given?

59. Is it constitutionally permissible to confine a person, or to keep a person confined, solely because of the persons' religious beliefs, or political ideologies, or shared cultural beliefs, or philosophical theories?

60. When a mentally disabled person has a liberty or property interest, should the subjective methods of an analysis, assessment, or evaluation of the mental disability be substituted with a scientific quantifiable and verifiable method?

61. Is secular humanism a religion or religious ideology protected by the first amendment?

62. Is it constitutionally permissible for the government, or custodians of a mentally disabled person, to initiate, establish, support, or condone an action, act, or inaction which would cause, or would be suspected to cause, an adverse psychological effect upon the mentally disabled person?

63. Are involuntarily committed mentally disabled people entitled to an "individualized" form of care and treatment specific and particularized to the individuals needs, personality, and characteristics?

64. Is it constitutionally permissible to relabel a punishment as a "treatment" and escape the requirements of due process, when the effects of the "treatment" are not significantly different from the punishment?

65. Is psychological abuse and mistreatment of the mentally ill and disabled equal to corporal punishment or cruel and unusual

punishment, or inhumane treatment, and equal to the physical abuse and mistreatment of the physically disabled and afflicted?

66. Is it constitutionally permissible to restrain a mentally disabled person in handcuffs, chains, and shackles, and place the mentally disabled in a public place in public view, when the mentally disabled person is not violent, confrontational, disruptive, disorderly, nor disoriented?

67. Is it permissible for the pilot of American Airlines Corporation to refuse to give a civil commitment food or water, when such is given to all others, merely because the civil commitment is being transported in the custody of U. S. Marshals?

68. Did the local newspaper discriminate against the Petitioner by refusing to place an advertisement for the solicitation of an attorney to represent him in this case?

69. Did the Green County Registrar of Voters deny the Petitioner the right to vote?

70. Is it constitutionally permissible to force a person to associate with others and to punish that person for refusing to associate with others?

71. Is it constitutionally permissible to discipline or to punish a person for refusing to speak or to communicate to others?

72. Is it constitutionally permissible to force a "treatment" upon a person solely for the purpose of altering or destroying a persons' religious beliefs, political ideologies, shared cultural beliefs, or philosophical theories?

73. Is it constitutionally permissible to force medicate a person with mind altering drugs solely to alter or to destroy a persons' religious beliefs, political ideologies, shared cultural beliefs, or philosophical theories?

74. Does a continuing accumulative pattern and series of harassing incidents, which creates a hostile environment, against a person suffering from a mental illness, disease, defect, or disability, constitute inhumane treatment, or corporal punishment, or cruel and unusual punishment when the incidents of harassment could cause a deterioration or regression of the mental status or condition of the person and when the harassment would interfere with psychotherapeutic progress?

75. Did this Petitioner suffer unreasonable seizure and false imprisonment?

76. Did this Petitioner suffer abuse and mistreatment by his custodians which constituted a Constitutional or statutory or civil violation?

77. Were the statutes, rules, regulations, Codes, and ordinances adequately and properly applied to the petitioner?

78. Did the lower courts err in dismissing the case?

79. If the Petitioner prevails upon the merits of the case, should an award of damages be commensurate to free world citizens who have suffered violations?

PARTIES.

Petitioner:

Coy R. Phelps, 78872-011, P.O. Box 4600, Rochester, Minnesota 55903-4600.

Respondents:

The U. S. District Court eliminated all of the named Defendants-Respondents in this action[1] except for:

R. H. RISON, Warden of the Federal Prison at Springfield Missouri who has a mailing address of P. O. Box 4000, Springfield, Missouri 65808.[2]

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[1] This Petitioner named the U. S. Federal Government and its agencies, and numerous individuals in their private and official capacities, as well as private businesses and people on contract with the prison and the federal government.

[2] The name of the counsel for the Appellee is Earl W. Brown, U. S. Attorney, 222 John Q. Hammons Parkway, Springfield, Missouri 65806.

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Laws in Motion and Argument in Lower Courts

The Constitutional Provisions Presented are:

[1] Article 3, Section 3, Clause 3 (Presidential responsibility)
[2] Article 4, Section 2 (Equal Rights/Justice)
[3] Amendment 1 (All clauses)
[4] Amendment 4 (unreasonable seizure-false imprisonment)
[5] Amendment 5 (Double jeopardy—self incrimination—due process—property seizure—)
[6] Amendment 6 (impartial decision makers)
[7] Amendment 8 (Cruel and Unusual)
[8] Amendment 9 (Other rights)

The Statutory Provisions Presented are:

[1] 5 USC 552a (Freedom of Information)
[2] 5 USC 701-706 (Government agency liability)
[3] 5 USC 2302 (Government failure-liability)
[4] 5 USC 7301; part 2 section 201; part 3 section 301 (Standards of ethics/conduct for government employees/agencies)
[5] 18 USC 17 (Insanity provisions/verdict)
[6] 18 USC 241-245 (Conspiracy-Civil Rights)
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[9] 18 USC 1113 (Attempted Murder)
[10] 18 USC 1621-1622 (Perjury)
[11] 18 USC 1701 (Obstruction of U S Mail)
[12] 18 USC 4001 (False Imprisonment)
[13] 18 USC 4042 (Bureau of Prison system is *only* for the *accused* and *convicted* . . . not acquitted)
[14] 18 USC 4045 (Provisions for autopsies)
[15] 18 USC 4081 (Classification—care—treatment—and "individualized" service)
[16] 18 USC 4086 (Duty of U.S. Marshals Service)

[17] 18 USC 4102 (Authority of Attorney General does not include provision for acquittees)
[18] 18 USC 4241 (Special hearing for incompetents)
[19] 18 USC 4242 (Insanity verdicts—pleas)
[20] 18 USC 4243 (Insanity acquittee provisions)
[21] 18 USC 4247 (Operation instructions for 4243)
[22] 28 CFR (Department of Justice/Bureau of Prison codes have no provision for acquitted persons)
[23] 28 CFR 45 *et seq.* (Standards of ethics/conduct for Federal Employees)
[24] 28 USC 1915 (In Forma Pauperis provisions)
[25] 28 USC 2241-2255 (Habeas Corpus statutes do not pertain to acquitted people in federal custody)
[26] 42 USC 233 and 250
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[28] 42 USC 1973 (No qualification for voting)
[29] 42 USC 1983 (use of the word "territory")
[30] 42 USC 1985 (Conspiracy of civil rights)
[31] 42 USC 1986 (Failure to prevent violation of law)
[32] 42 USC 1997a (Institutionalized people)
[33] 42 USC 1997e (Retaliation Prohibited)
[34] 42 USC 2000a-1 (Freedom from discrimination)
[35] 42 USC 2000a-2 (Interfering with Rights)
[36] 42 USC 2000b-2 (Interfering with legal actions)
[37] 42 USC 2000c-7 (U.S. Liability for damages)
[38] 42 USC 2000d (Discrimination of programs offered)
[39] 42 USC 2000h-1 (Double jeopardy)
[40] 42 USC 10841 (Mentally Ill Bill of Rights)
[41] 45 CFR 73.735-101 *et seq.* (Standards of Ethics and Conduct for Public Health Services employees)

Other Code of Ethics, Standards of Conduct, Canons of Professional Conduct and Responsibility:[3]

[1] American Bar Association Code of Judicial Conduct for Justices, Judges, Magistrates, and other similar Decision Makers;
[2] American Bar Association Code of Professional Responsibility for Attorneys and other similar counsels and legal professionals.
[3] American Medical Association Standards of Conduct for Physicians and Surgeons
[4] American Psychiatric Association Principle of Medical Ethics
[5] American Psychological Association Standards of Ethical Conduct
[6] American Psychoanalytic Association Principles of Ethics
[7] American Nurses Association Ethic Code for Nurses
[8] American Association for Counseling and Development Ethical Standards
[9] American Mental Health Counselors Association Code of Ethics and Principles of Conduct
[10] Standards of Employee Conduct and Responsibility for Bureau of Prison employees Program Statement 3420.06 (and referenced materials)
[11] Presidential Executive Order 12674 4/12/89 54 F.R. 15159; Order 12731, 1/17/90. 55 F.R. 42457 Principles of Ethical Conduct for Government Officers and Employees
[12] 5 USC 7301, Section 3, Code of Ethics for Government Services
[13] U.S. Commission Mental Health Services Policy Statement 50000.515.2 (District of Columbia)
[14] United Nations Universal Declaration of Human Rights
[15] United Nations Minimum Standards for the Treatment of Prisoners
[16] American Correctional Association Standards of Ethics and Conduct
[17] Counsel of State Government Ethics Laws

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[3] These Codes of Ethics are not presented in this Petition but will be presented in a separate Appendix in the Brief for the Appellant if so required.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992.

COY RAY PHELPS, 78872-011,

Petitioner,

v.

R. H. RISON, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petition for Writ of Certiorari

PETITIONER in this action, appearing in pro se, respectfully prays that a Writ of Certiorari be issued from this court to review the claims, actions, issues, points of issues, and legal theories and arguments in the above captioned case which was dismissed by the U.S. District Court, W. D. Missouri, Southern Division, and dismissed by the U. S. Court of Appeals for the 8th Circuit.

This court has jurisdiction and authority pursuant to the provisions of 28 USC 1253, 1254, 1651, 2101, and 2106.

Rule 11 Statement

This case has national import (Public Interest and Public Importance) and requires immediate settlement in this Court. This case affects all mentally ill and mentally disabled people who are involuntarily committed (including insanity acquittees).

The opinions presented by this court would provide needed guidelines to the lower courts, to all mental health professionals, and to the custodians of mental health institutions and facilities for the custody, care, treatment, and rehabilitation of the mentally ill, diseases, defective, and disabled.

The opinions of this court would also answer:

a. Where the insanity acquittees may be held in confinement for care, treatment, and rehabilitation;

b. Who is authorized to provide that care and treatment;

c. What minimum standards of care and treatment are required;

d. The quality of professional judgment necessary;

e. The limitations on the discretionary powers of officials regarding the involuntarily committed;

f. What are the rights, privileges, immunities, protections, and safeguards for the mentally disabled as compared to those accused of crimes, those convicted of crimes, and those free world citizens.

This petitioner has asserted that he (and all federal insanity acquittees) have been falsely imprisoned in federal prisons by misapplication of the laws and have suffered grave abuse and mistreatment because of the false imprisonment.

Opinions Below

There are no published opinions on this specifically, but the Petitioner has two cases[1] published regarding the words "substantial risk" (*Phelps v. US*, 831 F2d 897) and whether the petitioner was a civil confinee or a criminal confinee (*U.S. v. Phelps*, 955 F2d 1258) [excerpts in Appendix B].

Proceedings Below

1. Petitioner was indicted in September of 1985 on multiple counts of bombings of buildings. Petitioner was held without bail and subsequently entered a plea of "Not guilty only by reason of insanity" pursuant to 18 USC 17 (then section 20).

2. In September of 1986 Petitioner was brought to trial before a jury and the case of the crimes was presented to the jury. After the issue of the crime was terminated, the issue of insanity was present to the same jury, before the jury reached a verdict in the case of the merits of the crimes.

3. On September 26, 1986 the jury found the Petitioner "not guilty only by reason of insanity." The court then committed the Petitioner into the custody of the U. S. Attorney General pursuant to the provisions of 18 USC 4243(e).

4. The U. S. Attorney General then placed the Petitioner in a federal prison at Terminal Island California for an indeterminate period of time, contrary to the provisions of 18 USC 4243 and 4247 which mandate that the Petitioner be placed in a hospital. The Petitioner was treated in the same manner as convicted prisoners.

5. In May of 1987, Petitioner filed a Habeas Corpus application pursuant to 18 USC 4247(g) seeking release from imprisonment.

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[1] The two other cases related to this Appellant is *Phelps v. U.S.*, 9C 1987, 831 F2d 897 and *U.S. v. Phelps*, 9C 1992, 955 F2d 1258 in which the courts ruled that the words "substantial risk" could not be defined and that he was a civil commitant, not a criminal commitant.

[The case was published as *Phelps v. U.S.*, 9C 1987, 831 F2d 897 and appears in Appendix B].

6. Petitioner was then transferred to the Federal Prison at Springfield, Missouri;

7. In May of 1989, the prison administration, on its own initiative, filed a report with the trial court requesting the release of the Petitioner asserting that the Petitioner was not mentally ill;

8. In August of 1989, a Special Release Hearing was held at the U.S. District Court, Northern District of California at San Francisco, California. The release of the Petitioner was denied on the grounds of "Dangerousness" alone. [An Appeal was taken and the results were published as *U.S. v. Phelps*, 9C 1990, 955 F2d 1258 and appears in Appendix B].

9. Petitioner was returned to the federal prison at Springfield, Missouri at the request of the prosecutor;

10. In December of 1989, Petitioner filed an administrative complaint against a correctional officer for anti-white racism and for violating Petitioner's religious rights. Thereafter a series of incidents arose through deliberate abuse, mistreatment, and harassment against the Petitioner by prison officials. The incidents of abuse increased in frequency and intensity in passing time which eventually resulted in a lawsuit lodged in the U.S. District Court, Western District of Missouri, Southern Division, case number 91-3242-CV-S-RGC-R in the year 1991.

Petitioner challenged the constitutionality of the laws as well as making a civil and civil rights complaint on multiple causes of actions with the naming of numerous parties. Also filed was a habeas corpus action challenging the placement of the Petitioner in punishment segregation without any form of due process and solely because of the Petitioner's religious beliefs.

11. The U.S. Magistrate determined that the cases had been improperly joined by the court, but the court kept the cases joined and dismissed the cases as being "frivolous" under the provisions of 28 USC 1915.[2] The court also eliminated all parties except the name of the warden of the prison.

12. A timely appeal was taken to the U.S. Court of Appeals for the 8th Circuit which dismissed the case *sua sponte* without comment.[3] An application was made to Supreme Court Justice Harry H. Blackmun requesting that the court allow a separation of cases, but the clerk of the court refused to give the application to the Justice which was addressed to him individually pursuant to Supreme Court Rule 22.

13. A motion for an enlargement of time was made and granted in which to file a Petition for a Writ of Certiorari.[4]

Jurisdiction and Authority

This appeal is taken from the final order and judgment of the United States Court of Appeals for the Eighth Circuit of St. Louis, Missouri which dismissed the case without comment.[5] The case was previously presented to the United States District Court, Western District of Missouri, Southern Division, at Springfield, Missouri which also dismissed the case and disposed of *all* of the causes of actions, claims, theories, issues and points of issues related to the case and regarding the parties concerned.[6]

The United States District Court had jurisdiction and Authority to review the case and to grant remedy and relief pursuant to the provisions of Article 3 of the U.S. Constitution, Amendments 1 and

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[2] A copy of the court's order and recommendations appear in Appendix A.

[3] A copy of the Court of Appeals dismissal order appears in Appendix A.

[4] A copy of the Order granting a time extension appears in Appendix A.

[5] Copy of Appeal Court Order is in Appendix A.

[6] Copy of District Court Order is in Appendix A.

9 of the U.S. Constitution, the statutory provisions of 5 USC 552a, 7-1-706; 18 USC 241, 242, 245, 1091-1093, 4243, 4247; 28 CFR 0.01 *et seq.;* 28 USC 1331, 1339, 1343, 1346, 1361, 1651, 2201, 2202, 2241, 2501 (Clause 3), Rule 12 of 28 USC 2255; 29 USC 794; 42 USC 233, 250, 1983, 1988, 1997, 2000a-6, 2000aa-6, 10841; and Case Law Authorities.[7]

The United States Court of Appeals for the Eighth Circuit had jurisdiction and authority to review the case and to give an opinion and judgment pursuant to Article 3 and Amendments 1 and 9 of the U.S. Constitution, and the provisions of 28 USC 1291, 1292, 1651, 2106, and Case Law Authorities.

The United States Supreme Court has jurisdiction and authority to review the case pursuant to the provisions of Article 3 and Amendments 1 and 9 of the U.S. Constitution, the statutory provisions of 28 USC 1651, 2101, and 2106, and by Case Law Authorities.

Laws in Motion and Argument.

The laws in motion and argument presented to the U.S. District Courts are enumerated on page xix herein.

Statement of the Case and Facts.

This is a case of joined cases which were submitted to the U.S. District Court at Springfield, Missouri.

One case is a Habeas Corpus action challenging the constitutionality of placing the Petitioner in punitive segregation and relabeling the incident a "treatment" to avoid the due process requirements. During his imprisonment at the Federal Prison at Springfield, Missouri, the Petitioner was placed in punitive segregation several times because of his religious beliefs. The placement was labeled a "treatment" instead of a "punishment" but the effects were not different from punishment.

Petitioner requested that a religious leader of his faith be recruited from the free world to conduct prayer and teaching services for the members of Petitioners' Religion. The Petitioner asserted that the benefit is provided to other religions. The administration informed the Petitioner that it did not comply with individual requests but if all the members of his bible study group and religious group submitted similar written requests, then the request would be granted. Petitioner solicited requests from the other members and submitted them to the administration. Petitioner, and the other members, were immediately placed in punitive segregation. This Petitioner was charged with "inciting to riot" but the charges were dismissed and restated as "confined to administrative segregation for treatment." Administration informed the Petitioner that all members of his religion would never be placed in general population.

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[7] All Case Law Authorities, citations, and memoranda of law which are directly related to the issues of this case and are referenced, but not cited in the test, is found in Appendix D.

On another occasion, the Petitioner was laying in bed listening to the radio awaiting to go to sleep, when he was taken to punitive segregation without being informed of the reason. Twenty three days later he was told that he was placed in punitive segregation for "acting Bazaar" and that due process was not available because it was a treatment and not a disciplinary measure.

On another occasion, the Petitioner was speaking to an officer in a one to one conversation and mentioned the word "nigger." The white officer locked the Petitioner in punitive segregation for four months for the use of the word.

There are other incidents which were presented to the U.S. District Court which ruled that the issues were "frivolous" and dismissed the case.

The second case (joined with the other by the court) is a challenge to the constitutionality of the mental health statutes 18 USC 4243 and 4247 in their construction, intent, and application. The case also challenges the constitutionality of the authority of the U.S. Attorney General to place a person acquitted of criminal wrongdoing in a prison to be treated as a convicted prisoner. The case also challenges the constitutionality and application of the laws for the Federal Bureau of Prisons (18 USC 4042, 4081) in that the Bureau does not have the authority to have custody of those people acquitted of crimes. It is given authority to have custody of only those *accused* of crimes and those *convicted* of crimes. Petitioner also challenges the application of 18 USC 4001 as it prohibits a person from being falsely imprisoned and this petitioner was acquitted of criminal wrongdoing, yet was imprisoned in a federal prison which has been defined in the 28 CFR's. This Petitioner asserts that; (a) The statutes mandate that he be placed in a *hospital* for care, treatment, healing, recovery, and rehabilitation; (b) The *Hospital* must be certified by the Secretary of the Department of Health and Human Services and accredited by the Joint Committee on the accreditation of health care facilities; (c) The *hospital* must offer educational classes in psychology, sociology, cultural anthropology, humanities, philosophy, and other topics, mandated by the statute 18 USC 4243 and 4247(a)(1)(A) requiring that the acquittee "know and understand the consequences of his conduct and the impact on society"; (d) The acquittee must receive "individualized" care and treatment specific to his own particular needs, personality, and characteristics; (e) The Petitioner must be trained in a vocational skill or profession commensurate to his individual needs and characteristics which will enable him to be a productive member of society; (f) The petitioner must be treated by members of the Department of Public Health and Human Services (42 USC 233 and 733) and not by Bureau of Prison employees; (g) the provisions of 4243 (g) imposes criminal sanctions upon the acquittee and such sanctions is proscribed by the Constitution.

The petitioner also asserts that the provision of 42 USC 10841 become *substantive* rights (Mentally Ill Bill of Rights) for insanity acquittees under the direction of and mandates of 18 USC 4243, 4247 and 4081.

The Petitioner also asserts that he is denied equal protection and justice in that; (a) Incompetent people cannot be brought to trial, but people who raise an insanity defense are forced to stand trial; (b) When the issue of competency is raised, the incompetent is given an evidentiary hearing to determine his competency prior to any other proceedings, but when the issue of insanity is raised, the insane person must stand trial first and *then* assert his insanity defense; (c) the incompetent person is given a bifurcated determination of the guilt and competency by separate decision makers (judge or jury), but the insane person has only one continuing proceeding and only one decision maker which has been contaminated by the introduction of the evidence of the crime and the nature of the crime; (d) The incompetent must prove his incompetence by only a preponderance of the evidence (4241(d)), but the insane person must prove his insanity by clear and convincing evidence (4243(d)), *YET* because the insane person must prove his insanity to a decision maker who has been contaminated with the issue of the crime and the nature of the crime, the level of evidence required is automatically *enhanced* to a overwhelming level of evidence and not just a clear and convincing level. Petitioner asserts that when the issue of insanity is raised, the defendant must be given an evidentiary hearing BEFORE trial and if found to be insane (without the introduction of evidence of the crime) at the time a crime was committed, then the defendant MUST be released (and a civil commitment proceeding initiated).

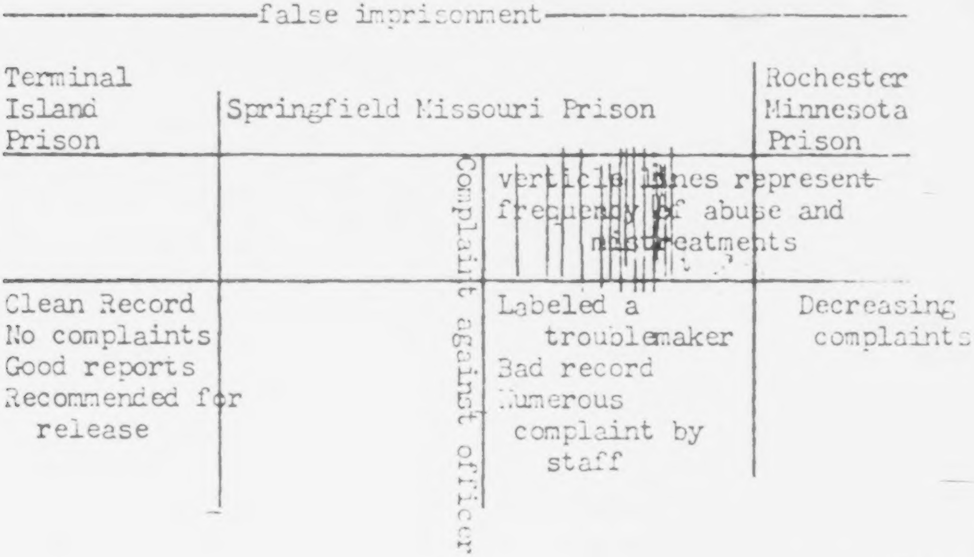
Petitioner asserted that the rules, regulations and policies of the prisons are established and applicable only against those *accused* and *convicted* of crimes and cannot be enforced against those acquitted of crimes.

The Third case regarded the issues of malpractice, unprofessional conduct, and misfeasance, nonfeasance, and malfeasance of office, duty, and responsibility. The case centered on the conduct of the people as determined by their own professional code of ethics established by their own professions and the petitioner asserted that the code of ethics were "laws" binding the members of that profession to liability for violations. The professions included the agencies of the Department of Justice and the private organizations on contract with the Department of Justice which had direct contact with the petitioner (U.S. Marshals Service, Oklahoma City County Jail, El Reno Federal Prison, etc.).

Also asserted by the Petitioner was the legal theory that when a federal employee violated the constitutional rights of another, and the employer refuses to terminate the employment of the employee, then the person offended may have the offender removed from public employment by the impeachment process because the offender is an public employee who has taken an oath to uphold, defend and support the Constitution and the laws of the United States.

The fourth case was an combined Civil and Civil Rights case involving all the incidents which occurred during the imprisonment of the petitioner which constituted a violation of his Constitutional, Statutory, Civil, Common Law, and established expected rights of an evolving humane civilized society under Amendment 9 of the U.S. Constitution.

The issue of false imprisonment and misapplication of the laws encompass the whole time period of confinement of the Petitioner, but the issues of abuse and mistreatment begin in December of 1989 and continue to the present time in which the abuses increase in frequency and intensity and accumulate geometrically and proportionally. Before 1989 the petitioner had an absolutely clean record, but when he filed an anti-white racism complaint against a white officer, the administration treated the petitioner and promised then that they would make his life a miserable hell, and they held true to their promise. Diagrammatically, it would appear as follows:


false imprisonment
Terminal Island Prison
Springfield Missouri Prison
Rochester Minnesota Prison
Complaint against officer
verticle lines represent frequency of abuse and mistreatments
Clean Record
No complaints
Good reports
Recommended for release
Labeled a troublemaker
Bad record
Numerous complaint by staff
Decreasing complaints

BEST AVAIL

It should be noted that at no time during the entire period of imprisonment did the petitioner violate any rules.

The above photograph is a photograph of the unit in which the Petitioner was placed for "treatment" purposes.

Note that each cell is individually locked with a small food door slot in each door. Each cell may have a prisoner with a different classification status. This Petitioner had a "treatment" status. In the cell next to this Petitioner was an inmate with a Disciplinary Segregation status. Across the space a prisoner may be locked up as a "seclusion" status. Another may be locked up as an "administrative Detention" status. Yet, virtually all the inmates on the unit are treated in the same manner as one another and that is the same as if they were on a "disciplinary segregation" status. This petitioner submitted to the lower courts a comparison chart to show that there were no significant differences in Disciplinary Segregation and the segregation for "treatment" of this the petitioner cannot amplify the issues of the case because of the page limitation imposed by the rules of the Court and because of the great number of issues involved. The U.S. Magistrate determined that the cases were

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improperly joined, but the court refused to sever the cases and made a single determination. The U.S. Court of Appeals for the 8th Circuit dismissed without comment. This petitioner made an application to an individual Supreme Court Justice (pursuant to Rule 22) to allow the cases to be separated, to allow the petitioner to appeal on separated cases and pay separate fees, but the clerk refused to submit the application to the individual justice for consideration. Therefore, because of the numerous issues, this Petitioner can only enumerate the issues with minimal notations since it is impossible to present sufficient evidence of several cases into a required 35 page presentation normally allowed for one case.

The issues, and points of issues, and legal theories are as follows:

[1] A Challenge to the constitutionally and application of the federal laws, federal codes, and prison rules, regulations, policies, standards, practices, and procedures as applied to the acquitted insanity acquittee;[8]

[2] Challenge to the authority of the U.S. Attorney to place the insanity acquittee in a prison and a challenge to the Bureau of prisons as having the authority to receive custody of the insanity acquittee;

[3] Challenging the practices, procedures of the U.S. Marshals service in the care and treatment of acquitted people; (Transporting them in handcuffs, chains, shackles, black boxes, etc., in public places and treated as convicted prisoners)

[4] Asserting that the petitioner suffered from a Bill of Attainder imposed by the government against a specific religion of which the petitioner is a member

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[8] A challenge to the Constitutionality of these statutes are also before the US District Court at Minneapolis, Minnesota (case 4-91-887 and 888) and 4-92-572 is also before the U.S. Court of Appeals for the 8th Circuit (cases 92-1853 and 92-2685); also is case 4-91-843 (appeal case 92-3805) regarding forced medication.

[5] Refusal of the government to provide discovery or freedom of information material necessary for the fair processing of the complaints in a court of law

[6] The prison officials violated the law by not giving the petitioner an annual review as mandated by the statutes and deprived him of an opportunity to be released;

[6] Making false entries into the record of the petitioner to insure that the petitioner would not be released, and the entries were made because of animosity toward the petitioner's religious beliefs

[7] Petitioner alleged a collusion between the courts and the administration of the prison. The prison officials admitted to the collusion in the administrative remedy process (in writing) but the court dismissed the issue as "frivolous"

[8] Petitioner challenged the prison administrative remedy grievance process as being unconstitutional and presented numerous incidents of harassment obstacles imposed to deny the petitioner access to the courts (paper too white, wrong color, wrong size, folded wrong, etc.) This court confirmed the petitioner's allegations in *McCarthy v. Madigan*. 50 CrL 2069, 2070.

[9] Petitioner was placed in punitive segregation for 90 days for refusing to associate with Negroes and was kept in segregation (without any due process) because he still refused to associate with Negroes, on a friendly basis, because it violated the tenets of his religion

[10] Petitioner was placed in punitive segregation, without any due process, because he complimented a nurse on the fragrance of her perfume saying that it was a nice fragrance.

[11] Petitioner was talking to a white officer and during the course of the conversation, the petitioner mentioned the word "nigger" and the officer placed the petitioner in punitive segregation (without any due process) for more than 90 days simply because he

thought someone may have overheard the word, but did not investigate to determine if anyone did, in fact, hear the word.

[12] The attorney advisor for the prison made a sworn affidavit to the court that the petitioner was not entitled to any due process when placed in punitive segregation because the petitioner is unconvicted and due process is available only to the convicted (the lower court agreed and dismissed the complaint)

[13] Petitioner was denied medical attention in emergency situations.(a) petitioner awoke with severe abdominal pain at 11 p.m. (the door to the cell was locked). The officer refused to get medical attention until 6 a.m. Petitioner's pain accumulated in intensity. The nurse (at 6 a.m.) told petitioner she was too tired to hear his complaint and ordered him to wait until the day shift at 8 a.m. The day shift nurse refused to call medical help until after her coffee break at 11 a.m. It was later discovered that a gall stone had blocked the bile duct and bile had backflowed and had infiltrated the vital organs of the body and had put the petitioner near death under grave painful conditions.

Doctors ordered a private room, but an officer made the petitioner get out of bed, push his bed down the hall (together with the I.V. Stand) to a room with patients ready for discharge who played the TV all day and night, played card games, and made continuous noise. The officer told petitioner that people with his religious beliefs did not deserve private rooms.

A physician discovered the petitioner's religious beliefs and attempted to murder the petitioner by classifying the petitioner as a diabetic and attempting to force medicate the petitioner with a large dose of insulin. Petitioner did not complain of any symptoms, had no symptoms of diabetes, and refused to be forced medicated. Fortunately, prior to that the petitioner had filed a habeas corpus action and on the day the physician had scheduled the injection, the petitioner was transferred to San Francisco California for a hearing. At the jail he demanded laboratory testing. Tests revealed the absence of diabetes entirely. The physician told the petitioner that if he had been given the insulin, the petitioner would have died.[9]

[14] When petitioner sought a medicine to soothe an upset stomach, such as maalox, the nurse gave the petitioner physohex soap to drink which caused painful vomiting (both soap and maalox are white liquids on the same shelf in the same medicine cabinet, but the nurse did not read the labels)

[15] Petitioner complained that he was suffering severe side effects from medication, but staff ignored the complaints. Petitioner suffered complete disorientation where he could not bathe, feed nor care for himself for 4 months.

[16] Physician prescribed nitroglycerine medication for emergency treatment if needed and that the petitioner was to keep it in his possession. The officers confiscated the medicine because the rules stated that inmates could not have personal medication. Staff threatened medical staff with discipline if he prescribed such medication again.

[17] A prisoner notified his psychiatrist, psychologist, unit officers, and nursing staff that he was hearing voices that told him to attack others. He notified them that he was going to attack someone, but did not know who. The staff ignored his remarks. While the petitioner was in the recreation room relaxing in a chair, with his eyes closed, the prisoner beat the petitioner unconscious with a metal floor model ash tray stand. The petitioner suffered multiple facial bone fractures and a severe concussion.

[18] When the petitioner was attacked, the petitioner was charged with fighting and placed in punitive segregation for three weeks even though numerous witnesses stated that the petitioner was an

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[9] It should be noted that inmates were actually murdered by the staff which prompted a congressional investigation. It was found that care and treatment was so gross and abuse so prevalent that the warden was replaced and severe changes made . . . but too late for the irreparable harm to the petitioner (see footnote 11, *post supra*).

unsuspecting victim. The officers stated that the rules were that all participants in a fight were to be segregated, regardless of circumstances . . . it was a policy.

[19] Petitioner's property seized, damaged, or destroyed because of the petitioner's religious beliefs. Petitioner cited numerous incidents and filed tort claims together with administrative remedies.

[20] Officer removed pages from the Petitioner's religious book (King James Version of the Holy Bible) so that the petitioner could not read the scriptures. Officer called the book "trash."

[21] Officers would make noise to awaken petitioner at night just to ask petitioner if he were asleep. These incidents were repeated 50-80 times a month.

[22] Officers would turn off the water to the Petitioner's cell whereby he could not drink, nor wash, nor flush the toilet for days at a time.

[23] Staff interference with the mail. Mail was delayed several weeks from the court. Mail was destroyed. The staff refused to let the petitioner type his letters, but allowed others to use typewriter available from from the officers office for inmate use. Refused to mail out unsealed letters but federal codes and prison rules allowed letters to be sent out sealed. The staff could not read mail from attorneys when it arrived, but on the pretense of searching for escape plans, the staff would conduct a cell search 10 minutes after the mail arrived and just read the letters just received.[10]

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[10] Petitioner made a test, with witnesses who signed statements. He mailed 10 letters to fictitious judges, lawyers, Senators, and law firms with false street addresses but with correct cities and states. NO letter returned yet all should have been returned as "undeliverable." Also, staff denied intercepting mail, but in a videotape interview sent to the court in June of 1992, Dr. Norton read from a letter which was intercepted in which the petitioner was never notified of the interception in violation of federal codes.

[24] Turning on the lights to the petitioners cell and I leaving them on 24 hours a day to deprive the petitioner of sleep and rest;

[25] Conducted excessive cell searches to harass the petitioner (sometime the same two officers would search the cell twice on the same working shift on the same day). When the petitioner complained the officers remarked "Its what all you white Christians deserve."

[26] When the officers delivered food to the petitioner in punitive segregation, the officers would take bites from sandwiches or spoon bites of food from the food before giving the Petitioner the meals.

[27] Petitioner contracted an incurable viral affliction from contaminated food trays which causes severe pain every month for about 10 days a month (it is on record and is a matter of medical records and was alleged to the courts but the courts deemed the matter as "frivolous."

[28] Supervising officer established the rule of opposition for the petitioner. Whatever the petitioner requested, the staff did the opposite. When the petitioner requested an extra blanket to keep warm in the winter, the officers confiscated the only blanket the petitioner had. When the petitioner complained that it was too cold . . . they turned off the heat and turned on the air conditioner. When the Petitioner complained that it was too hot, they turned up the heat. When the petitioner complained of the noise . . . they increased the noise level, etc. (supported by statements of witnesses submitted to the courts)

[29] The staff used the noise control of the Television and radio to inflict corporal punishment and inhumane treatment to the mentally disabled. The televisions were mounted on a pedestal in the middle of the unit (see photograph) but the speakers were mounted inside the walls of the individual cells. Yet, the volume controls were in the officers station. The officers would turn up the volume so loud to the petitioners cell that the metal bed would vibrate and the

petitioner could feel his internal organs vibrating. Complaints only caused the officers to take increasing retaliatory action.

[30] Written complaints and memoranda to supervising staff were intercepted and destroyed. The Lt. told the Petitioner that no communication would ever reach the supervising staff about any of his officers.

[31] The staff, on numerous occasions, attempted to provoke the petitioner into violent behavior. This technique was used, traditionally, to agitate, aggravate, and to provoke the inmate into a confrontation or assaultive behavior just to have the inmate suffer punish segregation, forced medication, or worse, to get an added criminal charge of assault to his sentence. This policy was sanctioned and approved by the warden and supervisors.

[32] Petitioner was not allowed out of his cell for three months for showering or recreation (the officers change duty assignments every 3 months). When the officer was assigned to the unit, he knew of the petitioners religious beliefs and made it known that he disliked the petitioners religion and would punish the petitioner because of the religious beliefs.

[33] When locked in punitive segregation in unit 10A, the petitioner was required recreation one hour a day at 5 a.m. outside in the rain or snow while the petitioner wore only underwear (The petitioner is 60 years old and is hardly a candidate for winter sports).

[34] Petitioner was double celled with inmates who had not been properly screened or classified and was assaulted three times because of it. Upon arrival to an institution an inmate who is classified as mentally disabled is placed together with other mentally disabled persons, without distinguishing the type of mental illness or disability. At El Reno Prison the petitioner was doubled celled with unpredictable and violent prisoners who were going to the medical centers to be evaluated while the petitioner was coming from the medical centers to a release hearing. At Rochester all mental health inmates are automatically placed in maximum secu-

rity to determine their "dangerousness" yet the inmates in general population are not placed in maximum security to determine their dangerousness regardless of their crimes or the nature of their crimes. All prisons treat the mentally ill significantly different, and worse, than other inmates.

[35] When the petitioner attempted to place a classified advertisement in the Springfield News-Leader saying ". . . prisoners wants attorney to represent him . . ." the newspaper cited a price of about $62.00. When the petitioner modified the advertisement by saying ". . . white prisoner wants attorney to represent him . . ." the newspaper increased the price to over $400.00. When the petitioner reluctantly agreed to pay the cost, the newspaper wrote a letter saying that it had consulted with the prison officials and together it was decided not to publish the advertisement. (The issue was a lawsuit against prison officials).

[36] While at the El Reno Prison the petitioner had a heart attack. When he was stabilized (while he was in the hospital unit) the staff called the U. S. Marshals to transfer the Petitioner to the Oklahoma City County Jail to die so that it would eliminate paperwork for the prison. The jail was filthy and did not meet even the minimal standards of decency . . . especially for medical treatment. The Marshals were informed that the petitioner had just suffered a heart attack, but they transferred the petitioner anyway at the request of the prison staff.

[37] The administration installed recreation equipment for the mentally ill inmates to use, but the officers refused to let the inmates use the equipment (video games, pingpong tables, etc.) and used it for staff only.

[38] The statutes mandate that the petitioner have an annual review to determine eligibility for release. The prison officials refused to give the petitioner a review in 1990 until the petitioner filed a law suit in 1991 and then, and only then, did the petitioner obtain a review evaluation.

[39] Petitioner challenged the use of handcuff, shackles, and chains on civil commitments for any reason other than to control violent behavior. The Marshals service and prison officials transported the petitioner in excessive restraints.

[40] Petitioner challenged the actions of the chief pilot of American Airlines by refusing to allow the petitioner to be unrestrained (even sandwiched between two marshals) and refused to allow the petitioner to eat or drink water but allowed all other passengers to eat and drink. The pilot knew that the petitioner was a civil commitment and not a convicted prisoner but still treated the petitioner in a manner worse than convicted prisoners.

[41] The Petitioner attempted to register to vote at Springfield Missouri. The Voter Registrar refused to allow the Petitioner to register. Petitioner notified the registrar that petitioner was fully qualified, but the registrar still refused saying he had contacted the warden of the prison and it was agreed that the Petitioner would not register.

[42] A Physician prescribed a treatment for the Petitioner which caused the petitioner suffering. The doctor said that the position of the moon, the stars, and the intensity of the universe electromagnetic fluxes told him what treatment to prescribe. The staff knew that the doctor had cancer of the brain (unknown to the petitioner) and followed his orders just as if the orders were normal and rational, with no regard to the health or safety of the patients.

[43] The doctors at Springfield asserted that anyone who had a Christian religious belief was mentally ill and treated the religious beliefs as a mental illness. They force medicated the patients just to alter their thoughts about religion. They punished inmates solely because of their religious claims.

[44] Petitioner requested the chaplain to recruit an outside minister of the petitioners' religion to conduct prayer service and religious teachings of the petitioners' religion. The Chaplain, and prison officials, told petitioner that it did not cater to individual requests,

but if the petitioner obtained similar requests from other members of his religion than the requests would be granted.[11] The Petitioner had other members of his bible study group make similar requests. Most of all the members were placed in punitive segregation and the petitioner was charged with "inciting to riot" (The petitioner was not given any due process or notice of charges. Only on administrative remedy appeal did the petitioner learn why he was in punitive segregation).

[45] When the petitioner submitted his final appeal to the U. S. Supreme Court on the matter of preventing an autopsy from being performed on his body after death, (US District Court case number 90-3171) the clerk of the Supreme Court refused to process the petition or the application made to the individual justice, or the appeal to the individual justice for review.

This petitioner cannot continue to present evidence of the violations of his rights and still meet the 35 page requirement mandated by this court. The issues are presented more fully in the complaint to the lower court, and in the administrative remedy procedures complaints and appeals. This petitioner informs this court again that similar issues are before the US District Court, District of Minnesota, Fourth Division and before the US Court of appeals for the 8th Circuit (*Phelps v U. S. Federal Government, et al.*).

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[11] It should be noted here that the U. S. Congress made an investigation (Congressman William Hughes) of the prison at Springfield and determined that patients suffered gross abuse and mistreatment and withdrew the facilities accreditation certification and ordered the treatment terminated. It was discovered that officers and staff had actually murdered inmates which resulted in only a suspension of employment of 3 to 4 weeks as punishment. The American Civil Liberties Union Foundation has a Civil law suit pending against the facility and the Bureau of prisons on the very issues raised by this Petitioner. The Dallas Morning News and the Washington Post newspapers made an indepth investigation and overwhelmingly condemned the facility and the methods of treatment. On the infamous "60 Minutes" television broadcast, the Director of the Federal Bureau of Prisons, J. Michael Quinlan, said (in regard to the murder of an inmate) "it is unfortunate . . . but I see no evidence of excessive force." (The inmate was restrained to the bed in a 4 point restraint-wrists and ankles-and 5 officers suffocated the inmate with a bath towel and the other officers assisted.) No legal action was taken, even though the incident was not disputed.

As a last notation of the issues the petitioner suggests that the cases were dismissed because of the caption of the case and not based upon the merits of the case.

[46] The Petitioner is a devoutly religious person committed to the fundamental precepts of the Christian tenets. He believes in the reality of the Lord Christ Jesus and that all believers are agents and representatives of the Lord.

The petitioner named as the real party of interest for the plaintiff CHRIST EMMANUEL JESUS as the petitioner his agent and representative and co-plaintiff. He named as the real party of interest for the defendants LUCIFER BEELZEBUB SATAN and the US Federal Government as his agent and representative and co-defendant (together with all the other defendants). The court dismissed all the defendants and the real parties of interest without giving the plaintiff even the opportunity to present any defense.

In a later video tape interview of the petitioner (submitted to the US District Court, Northern District of California, San Francisco, California in the case of *US v Phelps* 85-0899) the petitioner explained to the interviewing psychologist:

> "you are an agent and representative to the U. S. Federal Government. You serve the U. S. Federal Government. You obey the laws which are issued with the US Federal Government stamp. You are paid by the U. S. Federal Government, *But* you have never met the U. S. Federal Government . . . you have never shook hands with the federal government . . . you have never seen the federal government, yet you obey the government without question. I am no different from you in respect to my lord and his kingdom. Your king is Satan and my King is the Lord. The laws of my king are in the holy Bible . . . your laws are in various rules and regulations. You are paid with a check . . . I am paid with

> mercy, forgiveness, and other intangibles, yet my commitment to my real party of interest is no less than your commitment to your real party of interest."

The lower courts should not have judged the names of the real parties of interest in assessing the merits of the case.

[47] The prison does not have a coin operated telephone so that the pre-trail detainees and *civil* commitments can use the telephone to communicate with attorneys and the courts (who will not accept collect calls), yet the inmates are allowed coins to use vending machines. This petitioner complained that it restricted his liberty since the court established time requirements and written communication would not meet the time requirement. The question is should the prisons, or institutions, have coin operated telephones available at least to those who are unconvicted and unaccused of criminal wrongdoing?

[48] The prison officials forced the Petitioner to obey rules and regulations established only for those accused of crimes and those convicted of crimes and disciplined the petitioner by prison rules knowing that the petitioner was a civil commitment and was falsely imprisoned and was not subject to those prison rules and regulations.

[49] The prison officials forced the petitioner to exhaust administrative remedy procedures knowing that the procedures were unconstitutional, did not provide a meaningful avenue of resolvement, were merely contrived obstacles to deny access to the courts, and added burdensome procedures established to hinder fair justice.

[50] The District Court improperly joined the cases (in which Public Health Service employees were named as defendants) in violation of 42 USC 233 and 250 providing for a exclusive remedy (see Appendix C).

[51] The District Court returned the fees the Plaintiff submitted to file the complaints, then initiated its own application for in forma

pauperis status on behalf of the plaintiff, over the protests of the plaintiff, and then dismissed the cases under the provisions of the in forma pauperis provisions thereby expanding the courts authority to dismiss for any cause asserted by the court.

Argument

The court said in *Jones v. U. S.*, 1983, 463 US 354, 77 LEd2d 694, 103 S Ct 3043 that society (Congress) may not excuse a persons' criminal behavior because of insanity and then punish the insanity acquittee for invoking the insanity defense. The court said in *Vitek v. Jones*, 1980, 445 US 480, 63 LEd2d 552, 100 S Ct 1254, that the "expectation" is important . . . that is . . . when a person is convicted of a crime he expects to go to prison to be punished, but contrary to that, when a person is acquitted of a crime it is expected that he will not be punished.

In *U. S. v. Ward*, 1980, 448 US 242, 65 LEd2d 742, 100 S Ct 2636 the court said that when Congress indicated in a statute (by expressed wording or through implication) that a person should not be punished, and in the application of the statute the person is punished, or suffers punishment, then the statute is unconstitutional. In the case of this Petitioner the statute mandates that the petitioner be "hospitalized" for care and treatment, but the Attorney General placed the petitioner in a prison for punishment.

In *U. S. v. Sherman*, ND Ill, 1989, 722 F Supp 504 and 7C 1990, 912 F2d 907, the court affirmed that the insanity acquittee could be placed into the custody of the attorney general, but it was clear that the attorney general had no authority to place the acquittee in a prison. In *DeShaney v. Winnebago County Department of Social Services*, 1989, 489 US 189, 103 LEd2d 249, 109 S Ct 998, the court said that an involuntarily committed person may not be placed in an unsafe environment, and in *Youngberg v. Romeo*, 1982, 457 US 307, 73 LEd2d 28, 102 S Ct 2452 (see also *Romeo v. Youngberg*, 3C 1980, 644 F2d 147) the courts said that the involuntarily committed unconvicted person cannot be treated as a convicted prisoner. The court also asserted that in all the decisions for the care and treatment of the person, the decision makers must use professional judgment and that judgment is determined by the code of ethics or the standards of conduct established by the persons own profession, and when that person departs from that standard to violate the rights of another, then that professional is liable.

The 8th Circuit Court agreed with the decision of this court in *Washington (ante supra)* on forced medication. It said that the mere assertion of a mental health professional that a person needed, and would benefit from, psychotropic medication is not enough to warrant forced medication absent evidence of violence or of being gravely disabled.

It is clear that the federal statutes mandate that the insanity acquittee be "hospitalized" and that the facilities in which the petitioner has been confined are "prisons," with penological interests and objectives and not medical or rehabilitative objectives. The conditions of confinement created a hostile environment for the Petitioner which caused a deterioration and regression of mental condition rather than obtaining mental growth.

The petitioner was denied equal protection from the beginning. A incompetent person cannot be brought to trial for his crimes (*Pate v. Robinson*, 1966, 383 US 375, 15 LEd2d 815, 86 S Ct 836 and it is unconstitutional to execute a person who is insane (*Ford v. Wainwright*, 1986, 477 US 399, 91 LEd2D 335, 106 S Ct 2595). When a person is incompetent or becomes insane after conviction, then a evidentiary hearing must be held, yet when the issue of insanity is raised by the defense, before trial, the insane person must stand trial anyway and *then* prove his insanity. The law requires him to prove the insanity by clear and convincing evidence, but this procedure enhances his requirements to prove his insanity by overwhelming evidence since the same jury hears the insanity issue as it did the evidence of the guilt. If the crime, or nature of the crime, is menial (such as writing a threatening letter) the person is easily acquitted by insanity, but if the crime is major and especially rejected by society, then he must have overwhelming evidence of insanity to overcome the guilt of the crime. The insanity defense is required to have the same jury, but the incompetent person may have separate juries (*Lucas v. U. S.*, 1990, 497 A2d 1070).

Other arguments could have been presented at a trial, but the courts dismissed this case as "frivolous." Many courts have addressed the issues which are raised by this Petitioner and which could have been raised. (Case Law Authorities are found in Appendix D).

In *Tyler v. Ciccone*, WD Mo 1969, 299 F Supp 684, the court said that the insanity acquittee must be treated under rules and regulations appropriate for mental institutions and not for the rules and regulations established for prisons and convicted prisoners. This Petitioner asserted repeatedly (through the administrative remedy process) that the application of rules and regulations made for prisons violated his rights as a person acquitted of crimes.[12] The courts have unequivocably declared that the Federal Medical Centers are prisons, not hospitals (*Williams v. Richardson*, 8C 1973, 481 F2d 358).

When this court presented its opinion in *Foucha v. Louisana*, 1992, 51 CrL 2081, 2084 regarding "dangerousness" and insanity, it disembowled the federal insanity statute 18 USC 4243 of "dangerousness" (substantial risk) and thereby nullified the statute because the "dangerousness" issue was the focal issue of the statute and mental illness was the supporting issue (the key words being "due to"). The statute provided that an insanity acquittee may be kept in confinement when the substantial risk (dangerousness) is *due to* mental illness. The mental illness and dangerousness issue are inseparable in the statute, so nullifying the dangerousness aspect, automatically nullified the mental illness aspect. The main concern of the statute is dangerousness . . . not mental illness. The mental illness issue is only a yardstick to measure the issue of "dangerousness" and when this Supreme Court vacated the issue of "dangerousness" by its decision in Foucha, the yardstick became meaningless because there is nothing to measure. Psychiatrists and psychologists who have examined this Petitioner have determined that the petitioner is not mentally ill to such a degree that his condition could be classified a mental illness and the only reason the petitioner was kept in confinement was because of his religious beliefs and his political ideology (which the courts and government have admitted to).

---

[12] This issue, and all the other issues, are also raised in cases involving the Petitioner and the U. S. Federal Government (*Phelps v. U. S Federal Government, et al.*), US District Court, District of Minnesota, Fourth Division, cases 4-91-843, 4-91-887, 4-91-888, 4-92-572 and U. S. Court of Appeals for the 8th Circuit cases 92-1853, 92-2401 and 92-3805.

The court said in *Rhodes v. Chapman*, 1981, 452 US 337, 69 LEd2d 59, 101 S Ct 2392 (624 F2d 1099) that double celling of inmates is unconstitutional when it creates added dangers to one of the occupants (see also *White v. Roper*, U. S. District Court for the Northern District of California [August 1992], 9C 1990, 901 F2d 1501). The prison in which the petitioner is housed required, as a matter of policy mandated by the warden, that the petitioner should be multiple or double housed without regard to individual need in violation of 18 USC 4081 and 42 USC 10841.

The petitioner also submitted ample evidence in this case (and in the case of 4-91-843, 1992, D Minn) that medication was forced simply to destroy religious beliefs and the doctors made false sworn affidavits to the courts in violation of 18 USC 1001, 1621 and 1623 (see Appendix E).

The US Attorney made a sworn statement that the Federal Medical Centers were fully accredited hospitals, but a letter received from the Joint Committee on Accreditations of hospitals revealed that the US Attorney perjured himself (Letter and affidavits is found in Appendix E).

This court has jurisdiction and authority pursuant to Article 3 Section 2 of the U. S. Constitution and the provisions of 28 USC 1651 to issue a writ of mandamus compelling the President of the United States, pursuant to 28 USC 1361, to insure that the Laws of the United States shall be enforced, (regarding this petitioner and the issues involved, pursuant to the authority and responsibility assigned to him under Article 3, Section 3, Clause 3 of the U. S. Constitution) by the US Attorney General, and the agencies and employees subject to his authority, and to the Director of the Federal Bureau of Prisons, and the agencies and employees subject to his authority, and to the Director of the Department of Health and Human Services and to the agencies and employees subject to his authority and assure that their acts, actions, and judgments comport to the US Constitution and to the laws of the US. This Petitioner makes a request that this court issue that Writ.

This petitioner was evaluated by a team of psychiatrists and psychologists in 1987 and it was determined that the petitioner did not suffer from a gravely disabling mental illness, but was kept imprisoned solely on the issue of "dangerousness." Again, in 1989, it was determined by a team of psychiatrists and psychologists that the petitioner did not have a mental illness (in remission). The special release hearing argued the issue of "dangerousness" but did not argue the issue of mental illness. The "dangerousness" was based solely upon the petitioner's shared religious beliefs, political and cultural beliefs (That is, beliefs which is shared by others and are not delusional).

A psychologist testified that the "bible" of the psychiatric and psychological profession (upon which the issue of "dangerousness" was based) was the Diagnostic and Statistical Manual, 3rd edition (DSM-III) and that the diagnosis of the petitioner was determined by that manual. The manual clearly states in the *Cautionary statement* that the manual is not to be used in litigation and asserts that it is only a guide for the clinician to use to further his research. Not only that, but the manual clearly states that "shared cultural beliefs" cannot be used in evaluating a person nor forming a diagnosis. Mental illness was never a issue with the courts, the only issue argued was dangerousness and that dangerousness was founded and determined by matters which did not constitute a mental illness (anti-social personality, religious beliefs, political ideations, philosophical theories, etc. and even crimes which are not a mental illness but was used as a mental illness issue).

Conclusion

This Petitioner has been falsely imprisoned and because of it has suffered abuse and mistreatment at the hands of prison officials. The harm and injury was irreparable. The causes of action presented to the courts were meritorious and should not have been dismissed since the Petitioner presented overwhelming evidence that he was abused and that the institutions themselves were under congressional investigation for gross abuses of the law and the constitutional rights of the inmates. The incidents of abuse and mistreatment reported by this petitioner should have been considered in light of his civil status and the totality of circumstances including the adverse psychotherapeutic effects. The case should be remanded to trial and a meaningful appointment of counsel should be made to obtain adequate, fair, and just relief and remedy.

It is clear that the intent of Congress was that the insanity acquittee be hospitalized and not imprisoned and be treated greatly different than convicted prisoners. This is illustrated in 18 USC 4243(h) in which the confined acquittee is allowed to leave the facility under certain circumstances, even without approval of the court. This is not a privilege accorded convicted prisoners, yet this very privilege was denied the petitioner.

The lower courts knew the petitioner was not mentally ill, for evidence was presented which precluded mental illness, both in written affidavits and by in person testimony in open court. The prosecutor knew that the petitioner was not mentally ill, yet both kept the petitioner imprisoned in a prison (not hospital) solely on his shared cultural beliefs and that constitutes malicious prosecution and a bill of attainder.

Respectfully submitted,

COY R. PHELPS 78872-011
Pro Se
P.O. Box 4600
Rochester, Minnesota
55903-4600

Certificate of Service.

See last page of the Appendices

APPENDIX A—Orders and Judgments of Courts.

Docket Entries.

Proceedings include all events. TERMED APPEAL
6:91cv3242 *Phelps v. Turner* R/R

7/15/91	1	PETITION FOR WRIT OF HABEAS CORPUS (Provisionally filed pursuant to Court en Banc order of December 3, 1968) (jm)
7/15/91	2	ORDER by Judge Russell G. Clark Case referred to Magistrate James C. England (cc: all counsel) (jm)
7/16/91	3	ORDER TO SHOW CAUSE: by Magistrate James C. England; respondents ordered to show cause in writing within 20 days of the date of this Order (by 8/5/91) why petitioner should not be granted leave to proceed if and why the relief prayed for by petitioner should not be granted (cc: all counsel) (jm)
8/ 5/91	4	Response by respondent to Order to show cause (jk) [Entry date 08/06/91]
8/20/91	5	Traverse by petitioner Coy R. Phelps to response order [4-1] (cd)
8/28/91	6	MOTION by petitioner for exception and objection (jk)

9/ 9/91	7	ORDER by Judge Russell G. Clark that respondents are granted permission to transfer petitioner from the U. S. Medical Center (cc: all counsel) (jk)
9/18/91	8	MOTION by petitioner to stay proceedings (jm)
11/5/91	9	REPORT and RECOMMENDATION by Magistrate James C. England (cc: all counsel) (sk)
11/20/91	10	Exceptions by petitioner to report and recommendation of U. S. Magistrate [9] (nc)
3/ 9/92	11	ORDER by Judge Russell G. Clark overruling exceptions to report recommendation [10-1] denying leave to proceed in forma pauperis and dismissing petition without prejudice terminating case (cc: all counsel) (sk)
3/ 9/92	12	CLERK'S JUDGMENT entered 3/9/92; petitioner's exceptions overruled; petitioner denied leave to proceed in forma pauperis; petition dismissed without prejudice (cc: all counsel) (sk)
3/24/92	13	NOTICE OF APPEAL by petitioner Coy R. Phelps from Dist. Court decision [12-1] Filed 3/9/92 Entered 3/9/92 Paid $ -0- Rct. # n/a Letter sent requesting fee/docs. (cd)
4/14/92	14	Receipt 39795 in the amount of $105 for appeal fees. (cd)

4/14/92 — Delivered to USCA 2 ctfd cpys of appeal ntc and dkt entries; 2 cpys of Ord fld: 3/9/92 and Jgm fld: 3/9/92 and NOA Supplement (cc: attys and Judge) (cd)

Docket as of April 14, 1992 9:31 am

TERMED APPEAL
R/R

U.S. DISTRICT COURT

WESTERN DISTRICT OF MISSOURI (SPRINGFIELD)

◆

CIVIL DOCKET FOR CASE #: 91-CV-3242

Phelps v. Turner Filed: 7/15/91
Assigned to: Judge Russell G. Clark
Referred to: Magistrate James C. England
Demand: $0,000 Nature of Suit: 530
Lead Docket: None Jurisdiction: US Defendant
Dkt# in other court: None

Cause: 28: 1651 Petition for Writ of Habeas Corpus

COY R. PHELPS,

Petitioner,

v.

C.A. TURNER, Warden, MCFP, and Affiliated Officials and Organizations,

Respondent.

Coy R. Phelps
Reg. No.
78872-011
[COR LD NTC] [*PRO SE*]
MCFP-MN
Medical Center for Federal Prisoners
P. O. Box 4600
Rochester, MN 55903

◆

DOCKET AS OF APRIL 14, 1992 9:31 AM

Judgment in a Civil Case, Dated March 9, 1992

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

◆

COY RAY PHELPS

v.

R. H. RISON *et al.*,

Case Number 91-3242-CV-S-RGC-R

◆

Decision by Court. This action came to determination before the Court. The issues have been determined and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that petitioner's exceptions filed be overruled. Further that petitioner be denied leave to proceed in forma pauperis. Further that the petition be dismissed without prejudice.

Date Mar 09 1992

R. F. CONNOR, Clerk
Sally A. England
Deputy Clerk

Filed Mar 9 1992
R. F. Connor, Clk.
U. S. District Court
West. Disrtict
Missouri

Entered on Mar 09 1992

Order and Judgment, Dated March 9, 1992

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MISSOURI

SOUTHERN DIVISION

◆

COY RAY PHELPS,

Petitioner,

v.

R. H. RISON, Warden, *et al.*,

Respondents.

◆

Pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri, the petition herein was referred to the United States Magistrate Judge for preliminary review under the provisions of § 636(b), Title 28, United States Code.

The United States Magistrate Judge has completed his preliminary review of the petition herein and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis and that the petition filed herein for a writ of habeas corpus be dismissed.

Petitioner has filed written exceptions to the report and recommendation of the Magistrate in which he continues to assert that he as transferred from a semi-locked unit to a locked unit within the psychiatric ward at the United States Medical Center for punitive, rather than medical reasons. He also asserts that although some of the defendant-respondents listed in his civil complaint may have been improperly joined, he should be entitled to proceed.

A review of the files and records in this case establishes that petitioner is no longer housed in United States Medical Center for Federal Prisoners, and does not suffer from the conditions of confinement of which he originally complained. In addition, the record reflects that petitioner's transfer within the psychiatric unit was upon the order of his treating psychiatrist. Other than petitioner's conclusory allegation, there is nothing to suggest that the transfer was punitive. Petitioner has not, therefore, alleged a constitutional violation and further has alleged no compensable injury which would sustain an award of damages.

The Magistrate also properly recommended that a complaint tendered to the Court during the pendency of this action, failed to allege a constitutional violation against any named defendants. The complaint also improperly joined several alleged causes of action, and in many respects was frivolous on its face. Petitioner's exceptions must therefore be overruled.

Therefore, after a full *de novo* review of the report and recommendation and the files and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed action of the Magistrate are correct and should be approved. It is therefore.

ORDERED that petitioner's exceptions filed herein be, and they are hereby overruled.

It is further

ORDERED that petitioner be, and is hereby, denied leave to proceed in forma pauperis.

It is further

ADJUDGED that the petition be, and his hereby, dismissed without prejudice

RUSSELL G. CLARK
Senior United States District Judge

Date: 3/9/92

Filed Mar 9 1992
R. F. Connor, Clk.
U. S. District Court
West. District
of Missouri

Notice of Appeal, Dated March 16, 1992

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

SOUTHERN DIVISION

COY RAY PHELPS, 78872-011
Appellant-Petitioner,

v.

R. H. RISON, Warden, *et al.*,
Appellant-Respondent.

U.S. District Court at Springfield, Missouri

Civil Case No: 91-3242-CV-S-RGC-R

NOTICE is hereby given that the Appellant-Petitioner Coy Ray Phelps, 78872-011, in the above captioned case, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment of the U. S. District Court in the above caption dismissing the Civil and Civil Rights *Complaint* together with a Habeas Corpus action which judgment was entered on the ninth (9th) day of March, 1992.

This Appeal is taken pursuant to the provisions of 28 USC 1291 and 2253.

DATE: 3-16-92

COY R. PHELPS, 78872-011
P. O. Box 4600
Rochester, Minnesota
55903-4600

In *Pro Se*

Filed Mar 24 1992
R. F. Connor, Clk.
U. S. District Court
West. District
of Missouri

Judgment, Dated June 23, 1992

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

◆

NO. 92-1853WMS

COY RAY PHELPS,

Appellant,

vs.

R. H. RISON, Warden, MCFP, and Affiliated Officials and Organizations,

Appellee.

Appeal from the United States District Court for the
Western District of Missouri

◆

After examination of the file of the United States District Court, it is ordered by this Court that this appeal be dismissed pursuant to 8th Cir. R. 47A.

The clerk of the district court is directed to refund the fee for filing this appeal.

June 23, 1992

A true copy.

Attest: MICHAEL E. GENS
Clerk, U.S. Court of Appeals
Eighth Circuit

Filed Jul 15 1992
R. F. Connor, Clk.
U. S. District Court
West. District
of Missouri

Order of Supreme Court Extending Time for Filing Petition for Write of Certiorari

UNITED STATES SUPREME COURT

No. A-58

COY RAY PHELPS,

Petitioner,

v.

R. H. RISON, Warden *et al.*,

◆

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including October 21, 1992.

/S/ HARRY A. BLACKMUN
Associate Justice of the Supreme Court
of the United States

Dated this 27th
day of July, 1992.

APPENDIX B—Excerpts of Opinioned Published Cases

COY RAY PHELPS,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

No. 87—1556.

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT.

Submitted Oct. 6, 1987*
Decided Nov. 3, 1987.

Petitioner who had been found not guilty only by reason of insanity sought writ of habeas corpus after the United States District Court for the Northern District of California, Robert F. Peckham, Chief Judge, ordered his commitment. The Court of Appeals held that commitment statutes are not unconstitutionally vague.

Affirmed.

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*The panel finds this case appropriate for submission without oral argument pursuant to Ninth Circuit Rule 34-4 and Fed.R.App.P. 34(a).

Mental Health 433

Statutes which require a person found not guilty only by reason of insanity to be committed if court fails to find that the person's release would not create a "substantial" risk of bodily injury to another, or "serious" damage of property of another, due to present mental disease or defect are not constitutionally vague; even though words "substantial" and "serious" cannot be quantified, statute does not guide individual conduct but instead guides courts in making the commitment decision. U.S.C.A. Const.Amends. 5, 14; 18 U.S.C.A. §§ 4243(e), 4247(c)(4)(C).

●

Joseph P. Russoniello and Sanford Svetcov, San Francisco, Cal., for respondent-appellee.

Coy R. Phelps, pro se.

Appeal from the United States District Court for the Northern District of California.

Before BROWNING, PREGERSON and REINHARDT, Circuit Judges.

PER CURIAM:

The petitioner-appellant in this case, Coy Ray Phelps, was charged with making, possessing, and planting pipebombs that were recovered in various San Francisco locations. In July 1986, a jury found Phelps not guilty only by reason of insanity on all counts. Pursuant to the procedures set out in 18 U.S.C. §§ 4243 and 4247 (Supp. III 1985), a commitment hearing was held before the district judge. The judge found that Phelps was suffering from a severe mental disease and that there was clear and convincing evidence that Phelps' release "would create a substantial risk of bodily injury to persons and serious damage of property of others" due to that disease. He ordered Phelps committed under 18 U.S.C. § 4243(e).

Phelps subsequently petitioned for a writ of habeas corpus on the ground that 18 U.S.C. §§ 4243 and 4247 are unconstitutionally vague and overboard. 18 U.S.C. § 4243(e) provides that a person found not guilty only by reason of insanity shall be committed if the court fails to find "that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect." This language is reproduced in section 4247(c)(4)(C), regarding the contents of the required psychiatric or psychological reports. Specifically, Phelps asserts that the words "substantial" and "serious" in these subsections are too subjective and not strictly defined, and can be applied differently by different judges.

The legislative history of 18 U.S.C. § 4243 indicates that the "substantial risk" standard used in that section is similar to the test used in the District of Columbia's provisions for the commitment of persons found not guilty only by reason of insanity. Under the D.C. statute, an insanity acquittee can be released only if he "will not in the reasonable future be dangerous to himself or others." *See* S.Rep. No. 225, 98th Cong., 2nd Sess. 243n. 83 (1983), *reprinted in* 1984 U.S.Code Cong. & Admin.News 3182, 3425 n. 83 (quoting 24 D.C.Code 301(e)). The dangerousness test, while it cannot be precisely defined, is not an unfamiliar one: it is applied regularly by judges in a variety of contexts. For example, the test is part of the civil commitment standard in many jurisdictions. *See* ABA Standards for Criminal

Justice, *Criminal Justice Mental Health Standards*, ch. 7 at 387 (2nd ed. 1986). Its use has been upheld in statutes involving capital punishment, *Jurek v. Texas*, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976), and bail, *United States v. Salerno*, ___ U.S. ___, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). Other statutes governing the commitment of persons found not guilty only by reason of insanity that use a dangerousness test have also been upheld. *See Jones v. United States*, 463 U.S. 354, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (upholding D.C. statute); *Hickey v. Morris*, 722 F.2d 543 (9th Cir.1983) (upholding Washington statute)

Thus, section 4243's "substantial risk" language reflects dangerousness provisions the use and validity of which are already well established. It is true that the words "substantial" and "serious" cannot be quantified. However, the statute at issue here does not guide individual conduct; rather, it guides the judge who must make the commitment decision. Judges apply similar language for similar purposes with regularity.

The order of the district court is affirmed.

Appellant Coy Ray Phelps was found not guilty of various crimes by reason of insanity and committed to a medical treatment facility. Subsequently, the government opposed Phelps' release and moved the district court for a hearing under 18 U.S.C. § 4243(f). A doctor from a psychiatric pre-release review panel recommended that Phelps be conditionally released. A government-retained psychiatric expert concluded, however, that Phelps continued to suffer from a mental disease or defect posing a substantial threat to the community. Finding the government expert's assessment of Phelps credible and convincing, the district court denied Phelps' request for release.

[1] Because the release hearing under section 4243(f) is "civil" in nature, the district court did not violate Phelps' privilege against self-incrimination in granting the government's motion to order Phelps to submit to a psychiatric examination. [2] In addition, because an insanity acquittee seeking release on the ground that he has recovered places his insanity at issue, he can be compelled to undergo a psychiatric examination to determine fitness for release. [3] Phelps' argument that it was error to allow his own statements to be used to prolong his confinement failed. [4] Also, other procedural safeguards of the criminal process do not apply in proceedings that involve determinations of sanity. [5] In light of civil nature of the release hearing, the use immunity protections afforded Phelps by the district court, and the importance of determining Phelps' present mental condition, the court held that the district court did not err in ordering Phelps to testify at the release hearing.

[6] The court noted that the government's right to a hearing under section 4243(f) would have little value if the government were limited to cross-examining experts who had already concluded that Phelps should be released. [7] Thus, the district court had the authority to order psychiatric examinations to test the validity of the institution's recommendation that Phelps be released. [8] Balancing the interests at stake

questions because the Sexually Dangerous Person proceeding, itself, was "criminal." *Id.* at 368, 106 S. Ct. at 2992-93.

The Illinois statute expressly provided that proceedings under the Act were "civil in nature." The Supreme Court did not accept this classification at face value. The Court observed that legislative labels were not dispositive of the issue. *Id.* at 369, 106 S. Ct. at 2992. Finding that the purpose of the Act was to provide treatment, not punishment, the Court held that the commitment proceedings were not criminal within the meaning of the privilege against self-incrimination. The Court noted that the Act was designed to provide care and treatment to effectuate recovery and that an acquittee could be released upon proof that he or she no longer posed a threat to the community. *Id.* at 369-70, 106 S. Ct. at 2992. Further, although the Illinois Act provided for criminal proceedings, criminal charges, criminal procedural safeguards, and commitment to maximum security prison, the Court did not find that these factors changed its basic "civil" nature. *Id.* at 369-72, 106 S. Ct. at 2992-94.

[1] In Phelps' case, the district court followed the approach of the Supreme Court in *Allen*. It considered whether the release hearing under section 4243(f) more closely resembled a criminal prosecution or a civil commitment proceeding. The district court considered that the statute emphasizes treatment rather than punishment, that the acquittee bears the burden of proof, that the acquittee has no right to a jury determination, and the acquittee can petition for release every six months. Accordingly, the district court correctly determined that the statute is "civil" in nature. Thus, it did not err in granting the government's motion to order Phelps to submit to a psychiatric examination.

As an additional reason for finding that Phelps privilege against self-incrimination was not violated, we embrace the reasoning of the D.C. Circuit in *United States v. Byers*, 740 F.2d 1104 (D.C. Cir.) (*en banc*), *cert. denied*, 464 U.S. 1046, We find no violation of the privilege against self-incrimination by requiring Phelps to submit to a psychiatric examination. Thus, we affirm the district court's order.

B. Compelled Hearing Testimony

We agree with the district court's determination that a release hearing is civil. Consequently, we need not reach the question whether a court may compel the subject of a criminal proceeding to testify.[9]

The purpose of the release hearing, as well as of the psychiatric examination, is to determine the acquittee's present mental state; it is not to search for evidence of criminal activity. Any information gained from the psychiatric examination or from the hearing that bears on the acquitee's present mental condition, therefore, is not incriminating. Nevertheless, the district court took steps to protect Phelps' Fifth Amendment privilege against self-incrimination should his testimony incriminate him as to an offense other than the bombings for which he was tried.[10] To assure that his privilege was not vio-

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[9] The determination whether a proceeding is criminal or civil takes on greater significance when a defendant or insanity acquittee is compelled to testify. In a civil proceeding, a person may be called to the stand without their consent. They may then assert the privilege against self-incrimination. *See Lefkowitz v. Turley*, 414 U.S. 70, 77, 94 S. Ct. 316, 321 (1973). In a criminal proceeding, the prosecution may not call a defendant to the stand absent his or her consent and may not comment on a defendant's refusal to testify. *See Griffin v. California*, 380 U.S. 609, 612-13, 85 S. Ct. 1229, 1232 (1965) (citing *Wilson v. United States*, 149 U.S. 60 (1893)). The question whether the subject of involuntary civil commitment proceedings can assert the privilege against self-incrimination to avoid testifying was raised in *Tyars v. Finner*, 709 F. 2d 1274 (9th Cir. 1983). However, in *Tyars*, we declined to address this issue and instead decided the case on narrower grounds. *Id.* at 1283-84.

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[10] Phelps was also protected by the double jeopardy clause. U.S. Const. amend. V. He had been acquitted by reason of insanity for the San Francisco bombings and could not be prosecuted against for these offenses, even if he admitted planting the pipe bombs.

APPENDIX C—Copies of Laws in Motion and Argument

CONSTITUTION
OF THE UNITED STATES
UNANNOTATED

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Art. 1. THE CONGRESS

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax on duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[5]

No Tax or Duty shall be laid on Articles exported from any State.

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[5] This clause has been affected by the Sixteenth Amendment.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

ARTICLE XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE II

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

ARTICLE IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.[8]

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

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[8] This clause was affected by the Thirteenth Amendment.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Articles in Addition to, and Amendment of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Legislatures of the Several States Pursuant to the Fifth Article of the Original Constitution.

ARTICLE [I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE [IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE [VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE [IX]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE [X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

§ 17. Insanity defense

(a) Affirmative defense.—It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) Burden of proof.—The burden of proving the defense and convincing evidence.

18 USC

§ 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, defendant has the of insanity by clear pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

§ 245. Federally protected activities

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from-

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any prequisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;.

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

(d) For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 373. Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 1091. Genocide

(a) Basic offense.—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group; or attempts to do so, shall be punished as provided in subsection (b).

(b) Punishment for basic offense.—The punishment for an offense under subsection (a) is—

(1) in the case of an offense under subsection (a)(1), a fine of not more than $1,000,000 and imprisonment for life; and

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) Incitement offense.—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

(d) Required circumstance for offenses.—The circumstance referred to in subsections (a) and (c) is that—

(1) the offense is committed within the United States; or

(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(e) Nonapplicability of certain limitations.—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

§ 1093. Definitions

As used in this chapter—

(1) the term "children" means the plural and means individuals who have not attained the age of eighteen years;

(2) the term "ethnic group" means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

(3) the term "incites" means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

(4) the term "members" means the plural;

(5) the term "national group" means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

(6) the term "racial group" means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

(7) the term "religious group" means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

(8) the term "substantial part" means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.

§ 1113. Attempt to commit murder or manslaughter

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States, attempts to commit murder or manslaughter, shall, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than three years or fined under this title, or both.

§ 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

(1) each declaration was material to the point in question, and

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

(Added Pub.L. 91-452, Title IV, § 401(a), Oct. 15, 1970, 84 Stat. 932, and amended Pub.L. 94-550, § 6, Oct. 18, 1976, 90 Stat. 2535.)

§ 1621. Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

§ 1701. Obstruction of mails generally

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined not more than $100 or imprisoned not more than six, months, or both.

§ 1702. Obstruction of correspondence

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

§ 1703. Delay or destruction of mail or newspapers

(a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or the Postal Service, shall be fined not more than $500 or imprisoned not more than five years, or both.

(b) Whoever, being a Postal Service officer or employee, improperly detains, delays, or destroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined not more than $100 or imprisoned not more than one year, or both.

§ 4001. Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b) (1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil service laws, the Classification Act, as amended and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

§ 4041. Bureau of Prisons; director and employees

The Bureau of Prisons shall be in charge of a director appointed by and serving directly under the Attorney General at a salary of $10,000 a year. The Attorney General may appoint such additional officers and employees as he deems necessary.

§ 4042. Duties of Bureau of Prisons

The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and disciline of all persons charged with or convicted of offenses against the United States;

(4) Provide technical assistance to State and local governments in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

§ 4081. Classification and treatment of prisoners

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

§ 4045. Authority to conduct autopsies

A chief executive officer of a Federal penal or correctional facility may, pursuant to rules prescribed by the Director, order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death, when it is determined that such autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of State and local law protecting religious beliefs with respect to such autopsies shall be observed. Such officer may also order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility, with the written consent of a person authorized to permit such an autopsy or post-mortem operation under the law of the State in which the facility is located.

§ 4086. Temporary safe-keeping of federal of fenders by marshals

United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

§ 4102. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the expenses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey him to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with the offender, so far as such power is requisite for the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord him;

(11) to delegate the authority conferred by this chapter to officers of the Department of Justice.

§ 4241. Determination of mental competency to stand trial

(a) Motion to determine competency of defendant.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or psychological examination and report.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the trial to proceed; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the trial to proceed, the defendant is subject to the provisions of section 4246.

(e) Discharge.—When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial. Upon discharge, the defendant is subject to the provisions of chapter 207.

(f) Admissibility of finding of competency.—A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

§ 4242. Determination of the existence of insanity at the time of the offense

(a) Motion for pretrial psychiatric or psychological examination.—Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(b) Special verdict.—If the issue of insanity is raised by notice as provided in Rule 12.2 of the Federal Rules of Criminal Procedure on motion of the defendant or of the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find the defendant—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of insanity.

§ 4243. Hospitalization of a person found not guilty only by reason of insanity

(a) Determination of present mental condition of acquitted person.—If a person found, not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

(b) Psychiatric or psychological examination and report.—Prior to the date of the hearing, pursuant to subsection (c), the court shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.—A hearing shall be conducted pursuant to the provisions of section 4247(d) and shall take place not later than forty days following the special verdict.

(d) Burden of proof—In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(e) Determination and disposition.—If, after the hearing, the court fails to find by the standard specified in subsection (d) of this section that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily

injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(f) Discharge.—When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (e) determines that the person has recovered from his mental disease or defect to such an extent that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by the standard specified in subsection (d) that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing. employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care, or treatment.

(g) Revocation of conditional discharge.—The director of a medical facility responsible for administering a regimen imposed on an acquitted person conditionally discharged under subsection (f) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jursdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(h) Limitations on furloughs.—An individual who is hospitalized under subsection (e) of this section after being found not guilty only by reason of insanity of an offense for which subsection (d) of this section creates a burden of proof of clear and convincing evidence, may leave temporarily the premises of the facility in which that individual is hospitalized only—

(1) with the approval of the committing court, upon notice to the attorney for the Government and such individual, and after opportunity for a hearing;

(2) in an emergency; or

(3) when accompanied by a Federal law enforcement officer (as defined in section 115 of this title).

§ 4247. General provisions for chapter

(a) Definitions.—As used in this chapter—

(1) "rehabilitation program" includes—

(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

(C) drug, alcohol, and other treatment programs that will assist the individual in overcoming his psychological or physical dependence; and

(D) organized physical sports and recreation programs; and

(2) "suitable facility" means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant.

(b) Psychiatric or psychological examination.—A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section 4245 or 4246, upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 4242, 4243, or 4246, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245, and not to exceed thirty days under section 4242, 4243, or 4246, upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

(c) Psychiatric or psychological reports.—A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person and to the attorney for the Government, examined and shall include—

(1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and—

(A) if the examination is ordered under section 4241, whether the person is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;

(B) if the examination is ordered under section 4242, whether the person was insane at the time of the offense charged;

(C) if the examination is ordered under section 4243 or 4246, whether the person is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

(D) if the examination is ordered under section 4244 or 4245, whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

(E) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

(d) Hearing.—At a hearing ordered pursuant to this chapter the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3006A. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

(e) Periodic report and information requirements.—(1) The director of the facility in which a person is hospitalized pursuant to—

(A) section 4241 shall prepare semiannual reports; or

(B) section 4243, 4244, 4245, or 4246 shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct. A copy of each such report concerning a person hospitalized after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.

(2) The director of the facility in which a person is hospitalized pursuant to section 4241, 4243, 4244, 4245, or 4246 shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

(f) Videotape record.—Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

(g) Habeas corpus unimpaired.—Nothing contained in section 4243 or 4246 precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) Discharge.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4243, 4244, 4245, or 4246, counsel for the person or his legal guardian may, at any time during such person's hospitalization, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

(i) Authority and responsibility of the Attorney General.—

The Attorney General—

(A) may contract with a State, a political subdivision, a locality, or, a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter;

(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 4243 or 4246;

(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245, or 4246, consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and

(D) shall consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of this chapter and in the establishment of standards for facilities used in the implementation of this chapter.

(j) This chapter does not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.

42 USC

§ 250. Medical care and treatment of Federal prisoners

The Service shall supervise and furnish medical treatment and other necessary medical, psychiatric, and related technical and scientific services, authorized by section 4005 of Title 18, in penal and correctional institutions of the United States.

§ 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) The Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 392.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

Sec.

503.1 Bureau of Prisons Central Office.
503.2 Bureau of Prisons Northeast Regional Office.
503.3 Bureau of Prisons Mid-Atlantic Regional Office.
503.4 Bureau of Prisons Southeast Regional Office.
503.5 Bureau of Prisons North Central Regional Office.
503.6 Bureau of Prisons South Central Regional Office.
503.7 Bureau of Prisons Western Regional Office.
503.8 Bureau of Prisons Staff Training Centers.

Authority: 5 U.S.C. 301; 19 U.S.C. 3621, 3622, 3624, 4001, 4003, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Source: 56 FR 29990, July 23, 1991, unless otherwise noted.

§ 503.1 Bureau of Prisons Central Office

The Bureau of Prisons Central Office is located at 320 First Street NW, Washington, DC 20534.

§ 503.2 Bureau of Prisons Northeast Regional Office

The Bureau of Prisons Northeast Regional Office is located at U.S. Customs House, 7th Floor, 2nd and Chestnut Street, Philadelphia, Pennsylvania 19106. The following institutions are located within this region.

(a) United States Penitentiary (USP) Lewisburg, Pennsylvania 17837.

(b) Federal Correctional Institutions (FCI): (1) FCI Danbury, Connecticut 06811-3099; (2) FCI Fairton, New Jersey 08320; (3) FCI Loretto, Pennsylvania 15940; (4) FCI McKean, Bradford, Pennsylvania 16701; (5) FCI Otisville, New York 10963; (6) FCI Ray Brook, New York 12977.

(c) Federal Prison Camp (FPC), Allenwood, Montgomery, Pennsylvania 17752.

(d) Metropolitan Correctional Center (MCC) 150 Park Row, New York, New York 10007.

§ 503.3 Bureau of Prisons Mid-Atlantic Regional Office

The Bureau of Prisons Mid-Atlantic Regional Office is located at Junction Business Park, 10010 Junction Drive, Suite 100N, Annapolis Junction, Maryland 20701. The following institutions are located within this region.

(a) United States Penitentiary (USP) Terre Haute, Indiana 47808.

(b) Federal Correctional Institutions (FCI); (1) FCI Ashland, Kentucky 41101; (2) FCI Butner, North Carolina 27509; (3) FCI Lexington, Kentucky 40511; (4) FCI Milan, Michigan 48160; (5) FCI Morgantown, West Virginia 26505; (6) FCI Petersburg, Virginia 23804-1000.

(c) Federal Prison Camps (FPC); (1) FPC Alderson, West Virginia 24910; (2) FPC Seymour-Johnson, Seymour-Johnson Air Force Base, North Carolina 27531-5000.

§ 503.4 Bureau of Prisons Southeast Regional Office

The Bureau of Prisons Southeast Regional Office is located at 523 McDonough Boulevard, SE, Atlanta, Georgia 30315. The following institutions are located within this region.

(a) United States Penitentiary (USP) Atlanta, Georgia 30315-0182;

(b) Federal Correctional Institutions (FCI); (1) FCI Jessup, Georgia 31545; (2) FCI Marianna, Florida 32446; (3) FCI Talladega, Alabama 35160; (4) FCI Tallahassee, Florida 32301.

(c) Federal Prison Camps (FPC); (1) FPC Eglin, Eglin Air Force Base, Florida 32542; (2) FPC Homestead, Florida 33039-5000; (3) FPC Maxwell, Montgomery, Alabama 36112; (4) FPC Pensacola, Florida 32509-0001; (5) FPC Tyndall, Tyndall Air Force Base, Florida 32403-0150.

(d) Metropolitan Correctional Center (MCC), 15801 SW 137th Avenue, Miami, Florida 33177.

(e) Federal Detention Center, Fort Gordon, Georgia 30905.

§ 503.5 Bureau of Prisons North Central Regional Office.

The Bureau of Prisons North Central Regional Office is located at Airworld Center, 10920 Ambassador Drive, Suite 200, Kansas City, Missouri 64153. The following institutions are located within this region.

(a) United States Penitentiaries (USP): (1) USP Leavenworth, Kansas 66048; (2) USP Marion, Illinois 62959.

(b) Federal Correctional Institutions (FCI): (1) FCI Englewood, Littleton, Colorado 80123; (2) FCI Oxford, Wisconsin 53952-0500; (3) FCI Sandstone, Minnesota 55072.

(c) Federal Prison Camps (FPC): (1) FPC Duluth, Minnesota 55814; (2) FPC Yankton, South Dakota 57078.

(d) U.S. Medical Center for Federal Prisoners (USMCFP), Springfield, Missouri 65808.

(e) Federal Medical Center (FMC), P. O. Box 4600, Rochester, Minnesota 55903-4600.

(f) Metropolitan Correctional Center (MCC) 71 W. Van Buren Street, Chicago, Illinois 60605.

§ 503.6 Bureau of Prisons South Central Regional Office.

The Bureau of Prisons South Central Regional Office is located at 4211 Cedar Springs Road, Suite 300, Dallas, Texas 75219. The following institutions are located within this region:

(a) Federal Correctional Institutions (FCI): (1) FCI Bastrop, Texas 78602; (2) FCI Big Spring, Texas 79720-7799; (3) FCI El Reno, Oklahoma 73036-1000; (4) FCI Fort Worth, Texas 76119-5996; (5) FCI La Tuna, Anthony, New Mexico-Texas 88021; (6) FCI Memphis, Tennessee 38134-7690; (7) FCI Seagoville, Texas 75159; (8) FCI Texarkana, Texas 75501; (9) FCI Three Rivers, Texas (to open in late 1990).

(b) Federal Prison Camps (FPC): (1) FPC Bryan, Texas 77803; (2) FPC El Paso, Texas 79906-0300; (3) FPC Millington, Tennessee 38053.

(c) Federal Detention Center, Oakdale, I, Louisiana 71463.

(d) Federal Deportation Center, Oakdale II, Louisiana 71463.

§ 503.7 Bureau of Prisons Western Regional Office.

The Bureau of Prisons Western Regional Office is located at Belmont Shores, 1301 Shoreway Road, 4th Floor, Belmont, California 94002. The following institutions are located within this region:

(a) United States Penitentiary (USP) Lompoc, California 93436.

(b) Federal Correctional Institutions (FCI): (1) FCI Lompoc, California 93436; (2) FCI Phoenix, Arizona 85027; (3) FCI Pleasanton, California 94568; (4) FCI Stafford, Arizona 85546; (5) FCI Sheridan, Oregon 97378-9601; (6) FCI Terminal Island, California 90731; (7) FCI Tucson, Arizona 85706.

(c) Federal Prison Camps (FPC): (1) FPC Boron, California 93516; (2) Nellis, Nellis Air Force Base, Area II, Las Vegas, Nevada 89191-5000.

(d) Metropolitan Correctional Center (MCC), San Diego, California 92101-6078.

(e) Metropolitan Detention Center (MDC), 535 North Alameda, Los Angeles, California 90053-1500.

§ 503.8 Bureau of Prisons Staff Training Centers

The Bureau of Prisons Staff Training Centers are located at:

(a) Federal Law Enforcement Training Center, Building 21, Glynco, Georgia 31524;

(b) Management and Specialty Training Center, 601 Chambers Road, Suite 3000, Aurora, Colorado 80011;

(c) National Paralegal Training Center, 4211 Cedar Springs Road, Suite 250, Dallas, Texas 75219;

(d) Food Service and Trust Fund Training Center, c/o FCI, Fort Worth, Texas 76119.

28 CFR § 45.735-21 Miscellaneous statutory provisions.

Each employee should be aware of the following statutory prohibitions against:

(a) Lobbying with appropriated funds (18 U.S.C. 1913).

(b) Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(c) Employment of a member of a Communist organization (50 U.S.C. 784).

(d) (1) Disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) disclosure of confidential information (18 U.S.C. 1905).

(e) Habitual use of intoxicants to excess (5 U.S.C. 7352).

(f) Misuse of a government vehicle (31 U.S.C. 638a).

(g) Misuse of the franking privilege (18 U.S.C. 1719).

(h) Use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) Fraud or false-statements in a Government matter (18 U.S.C. 1001).

(j) Multilating or destroying a public record (18 U.S.C. 2071).

(k) Counterfeiting and forging transportation request (18 U.S.C. 508).

(l) (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(m) Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(n) Acting as the agent of a foreign principal registered-under the Foreign Agents Registration Act (18 U.S.C. 219).

(o) Engaging in violation or merit system principles (5 U.S.C. 2301).

(p) Engaging in prohibited personnel practices (5 U.S.C. 2302).

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-10 Improper use of official information.

No employee shall use for financial gain for himself or for another person, or make any other improper use of whether by direct action on his part or by counsel, recommendation, or suggestion to another person, information which comes to the employee by reason of his status as a Department of Justice employee and which has not become part of the body of public information.

§ 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(c) the officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

(e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

§794. Nondiscrimination under federal grants and programs; promulgation of rules and regulations

(a) Promulgation of rules and regulations

No otherwise qualified individual with handicaps in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purpose of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentally of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2891(12) of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers; exception

Small providers are not required by subsection (a) of this section to make significant structural alterations to their facilities for the purpose of assuring program accessibility, if alternataive means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

§ 233. Civil actions or proceedings against commissioned officiers or employees

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of Title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of Title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to United States district court; procedure; proceeding upon removal deemed tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto. Should a United States district court determine on a hearing on motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of Title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of Title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of Title 28, for such damage or injury.

July 1, 19

§ 1395bb. Effect of accreditation

(a) Except as provided in subsection (b) of this section and the second sentence of section 1395zx of this title, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2)(A) such institution authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission, together with any other information directly related to the survey as the Secretary may require (including corrective action plans),[1]

(B) Such Commission releases such a copy and any such information to the Secretary,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title; except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose), requires a discharge planning process (or imposes another requirement which serves substantially the same purpose), or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with clause (A) or (B) of section 1395x(e)(6) of this title or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395k(a)(2)(F)(i), 1395m(c)(3), 1395x(e), 1395x(f), 1395x(i), 1395x(o), 1395x(p)(4)(A) or (B), paragraphs (13) and (14)[2] of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2), or 1395x(mm)(1) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding. The Secretary may not disclose any accreditation survey (other than a survey with respect to a home health agency) made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.

(b) Notwithstanding any of the provision of this subchapter, if the Secretary finds that a hospital has significant deficiencies (as defined in regulations pertaining to health and safety), the hospital shall, after the date of notice of such finding to the hospital and for such period as may be prescribed in regulations, be deemed not to meet the requirements of the numbered paragraphs of section 1395x(e) of this title.

§ 1971. Voting Rights

Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(a)(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

> (A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices or procedures applied under such law or laws to other individu-

Jurisdiction: exhaustion of other remedies

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

§ 1983. Civil Action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§ 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; Intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully

assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such

injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.

§ 1997. Definitions

As used in this subchapter—

(1) The term "institution" means any facility or institution—

(A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and

(B) which is—

(i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped;

(ii) a jail, prison, or other correctional facility;

(iii) a pretrial detention facility;

(iv) for juveniles—

(I) held awaiting trial

(II) residing in such facility or institution for purposes of receiving care or treatment; or

(III) residing for any State purpose in such facility or institution (other than a residential facility providing only elementary or secondary education that is not an institution in which reside juveniles who are adjudicated delinquent, in need of supervision, neglected, placed in State custody, mentally ill or disabled, mentally retarded, or chronically ill or handicapped); or

(v) providing skilled nursing, intermediate or long-term care, or custodial or residential care.

(2) Privately owned and operated facilities shall not be deemed "institutions" under this subchapter if—

(A) the licensing of such facility by the State constitutes the sole nexus between such facility and such State;

(B) the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII, or under a State plan approved under title XIX, of the Social Security Act, constitutes the sole nexus between such facility and such State; or

(C) the licensing of such facility by the State, and the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII, or under a State plan approved under title XIX, of the Social Security Act, constitutes the sole nexus between such facility and such State;

(3) The term "person" means an individual, a trust or estate, a partnership, an association, or a corporation;

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States;

(5) The term "legislative days" means any calendar day on which either House of Congress is in session.

Pub.L. 96-247, § 2, May 23, 1980, 94 Stat. 349.

§ 1997a. Initiation of civil actions

Discretionary authority of Attorney General preconditions

(a) Whenever the Attorney General has reasonable cause to believe that any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 1997 of this title, to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available under this subchapter to persons residing in or confined to an institution as defined in section 1997(10(B)(ii) of this title only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States.

Discretionary award of attorney fees

(b) In any action commenced under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs.

Attorney General to personally sign complaint

(c) Any complaint filed by the Attorney General pursuant to this section shall be personally signed by him.

§ 200h-1. Double jeopardy; specific crimes and criminal contempts

No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for specific crime under the laws of the United States based upon the same act or omission.

Pub.L. 88-352, Title XI, § 1102, July 2, 1964, 78 Stat. 268.

§ 2000aa-6. Civil actions by aggrieved persons

Right of action

(a) A person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this chapter, or against any other governmental unit, all of which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this chapter while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity in paragraph (1).

Good faith defense

(b) It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) of this section that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

Official immunity

(c) The United States, a State, or any other governmental unit liable for violations of this chapter under subsection (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

Exclusive nature of remedy

(d) The remedy provided by subsection (a)(1) of this section against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this chapter, against the officer or employee whose violation gave rise to the claim, or against the estate of such officer or employee.

Admissibility of evidence

(e) Evidence otherwise admissible in a proceeding shall not be excluded on the basis of a violation of this chapter.

Damages: costs and attorneys' fees

(f) A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of $1,000, and such reasonable attorneys' fees and other litigation costs reasonably incurred as the court, in its discretion, may award: *Provided*, *however,* That the United States, a State, or any other governmental unit shall not be liable for interest prior to judgment.

Attorney General: claims settlement; regulations

(g) The Attorney General may settle a claim for damages brought against the United States under this section, and shall promulgate regulations to provide for the commencement of an administrative inquiry following a determination of a violation of this chapter by an officer or employee of the United States and for the imposition of administrative sanctions against such officer or employee, if warranted.

Jurisdiction

(h) The district courts shall have original jurisdiction of all civil actions arising under this section.

Pub.L. 96-440, Title I, § 106, Oct. 13, 1980, Stat. 1880.

SUBCHAPTER II—RESTATMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

§ 10841. Restatement of Bill of Rights

It is the sense of the Congress that, as previously stated in title V of the Mental Health Systems Act [42 U.S.C.A. § 9501 *et seq.*], each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary[1] consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) The reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) the right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person;

(iii) system established under subchapter I of this chapter to protect and advocate the rights of individuals and mental illness; and

(iv) qualified advocate;

for the purpose of receiving assistance to understand; exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph(1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

SUBCHAPTER III—CONSTRUCTION

§ 10851. Construction of subchapters I and II; "individual with mental illness" defined

(a) Subchapters I and II of this chapter shall not be construed as establishing any new rights for individuals with mental illness.

(b) For purposes of this section, the term "individual with mental illness" has the same meaning as in section 10802(3) of this title.

Other laws not presented herein will be presented in the brief as a Joint Appendix Supplement.

Federal. Belonging to the general government or union of the states. Founded on or organized under the Constitution of the United States. Pertaining to the national government of the United States. Of or constituting a government in which power is distributed between a central authority (*i.e.* federal government) and a number of constituent territorial units (*i.e.* states). *See also* Federal government.

A league or compact between two or more states, to become united under one central government. *See* Federation.

Federal agency. Any executive department, military department, government corporation, government-controlled corporation or other establishment in the executive branch of government including the Executive office of the President or any independent regulatory agency. 5 U.S.C.A. § 552(f).

Federal jurisdiction. Powers of federal courts founded on U.S. Constitution (Article III) and Acts of Congress (*e.g.* Title 28 of United States Code). *See* Diversity of citizenship; Federal question jurisdiction.

Federal question jurisdiction. Cases arising under Constitution of United States, Acts of Congress, or treaties, and involving their interpretation and application, and of which jurisdiction is given to federal courts, are commonly described as involving a "federal question." See U.S.Const., Art. III, Sec. 2, and 28 U.S.C.A. § 1331 with respect to "federal question" jurisdiction of federal courts.

Federation. A joining together of states or nations in a league or association; the league itself. *See also* Compact; Federal; Federal government; United States.

An unincorporated association of persons for a common purpose.

Federal government. The system of government administered in a nation formed by the union or confederation of several independent states.

In strict usage, there is a distinction between a *confederation* and a *federal government*. The former term denotes a league or permanent alliance between several states, each of which is fully sovereign and independent, and each of which retains its full dignity, organization, and sovereignty, though yielding to the central authority a controlling power for a few limited purposes, such as external and diplomatic relations. In this case, the component states are the units, with respect to the confederation, and the central government acts upon them, not upon the individual citizens. In a *federal government*, on the other hand, the allied states form a union (*e.g*. United States),—not, indeed, to such an extent as to destroy their separate organization or deprive them of *quasi* sovereignty with respect to the administration of their purely local concerns, but so that the central power is erected into a true national government, possessing sovereignty both external and internal,—while the administration of national affairs is directed, and its effects felt, not by the separate states deliberating as units, but by the people of all, in their collective capacity, as citizens of the nation. The distinction is expressed, by the German writers, by the use of the two words "*Staatenbund*" and "*Bundesstaat;*" the former denoting a league or confederation of states, and the latter a federal government, or state formed by means of a league or confederation.

See also Federal.

Federal Tort Claims Act. The government of the United States may not be sued in tort without its consent. That consent was given in the Federal Tort Claims Act (1946), which largely abrogated the federal government's immunity from tort liability and established the conditions for suits and claims against the federal government. The Act (28 U.S.C.A. §§ 1346(b), 2674) preserves governmental immunity with respect to the traditional categories of intentional torts, and with respect to acts or omissions which fall within the "discretionary function or duty" of any federal agency or employee. *See also* Sovereign immunity.

Recovery. In its most extensive sense, the restoration or vindication of a right existing in a person, by the formal judgment or decree of a competent court, at his instance and suit, or the obtaining, by such judgment, of some right or property which has been taken or withheld from him. St. Paul Fire & Marine Ins. Co. v. Wood, 242 Ark. 879, 416 S.W.2d 322, 327. This is also called a "true" recovery, to distinguish it from a "feigned" or "common" recovery.

The obtaining of a thing by the judgment of a court, as the result of an action brought for that purpose. The amount finally collected, or the amount of judgment. In re Lahm, 179 App.Div. 757, 167 N.Y.S. 217, 219. To be successful in a suit to obtain a judgment. *Garza v. Chicago Health Clubs, Inc.*, D.C.Ill., 347 F.Supp. 955, 962.

See Common recovery; Recoupment; Repossession; Restitution.

Final recovery. The final judgment or verdict in an action. *See* Judgment; Verdict.

Redress. Satisfaction for an injury or damages sustained. Damages or equitable relief. *See* Recovery; Restitution.

Petition. A written address, embodying an application or prayer from the person or persons preferring it, to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favor, privilege, or license. A formal written request addressed to some governmental authority. The right of the people to petition for redress of grievances is guaranteed by the First Amendment, U.S. Constitution.

A written request to a board for action on some matter therein laid before it. *McKillop v. County Bd. of Ed. of Sanborn County*, 78 S.D. 587, 105 N.W.2d 671, 675. For example, a formal paper filed with the N.L.R.B. seeking a secret ballot election among a certain group of employees (bargaining unit).

A formal written application to a court requesting judicial action on a certain matter. A recital of facts which give rise to a cause of action. *Matthews v. Simmons, Tex.Civ.App.*, 589 S.W.2d 156, 159. An application made to a court *ex parte*, or where there are no parties in opposition, praying for the exercise of the judicial powers of the court in relation to some matter which is not the subject for a suit or action, or for authority to do some act which requires the sanction of the court; as for the appointment of a guardian, for leave to sell trust property, etc. Formerly, in equity practice the original pleading was denominated a petition or bill. Today, in almost all jurisdictions, whether in law or equity, the initial pleading is a complaint.

Written request to the court for an order after notice. Uniform Probate Code, §§ 1-201(31), 5-103(15).

Grievance. In labor law, a complaint filed by an employee, or by his other union representative, regarding working conditions and for resolution of which there is procedural machinery provided in the union contract. An injury, injustice or wrong which gives ground for complaint because it is unjust, discriminatory, and oppressive. *See* Complaint.

Restitution. An equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. *State v. Barnett*, 110 Vt. 221, 3 A.2d 521, 525, 526. Act of making good or giving an equivalent for or restoring something to the rightful owner. *Antoine v. McCaffrey,* Mo.App., 335 S.W.2d 474, 489. Compensation for the wrongful taking of property. *Com. v. Fuqua,* 267 Pa.Super. 504; 407 A.2d 24, 25. Restoration of status quo and is amount which would put plaintiff in as good a position as he would have been if no contract had been made and restores to plaintiff value of what he parted with in performing contract. *Explorers Motor Home Corp. v. Aldridge,* Tex.Civ.App., 541 S.W.2d 851, 852. See Restatement, Second, Contracts, § 373.

A person who has been unjustly enriched at the expense of another is required to make restitution to the other. Restatement of the Law, Restitution, § 1.

In torts, restitution is essentially the measure of damages, while in contracts a person aggrieved by a breach is entitled to be placed in the position in which he would have been if the defendant had not breached.

In the law of commercial sales, the buyer's rights to restitution are governed by U.C.C. §§ 2-711 and 2-718.

See also Unjust enrichment, doctrine of.

Criminal law. The federal courts and many states have restitution programs under which the criminal offender is required to repay, as a condition of his sentence, the victim or society in money or services. *See e.g.* 18 U.S.C.A. §§ 3663, 3664.

Martime law. The placing back or restoring articles which have been lost by jettison: This is done, when remainder of the cargo has been saved, at the general charge of the owners of the cargo.

Restitution of conjugal rights. In English ecclesiastical law, a species of matrimonial cause or suit which was brought whenever either a husband or wife was guilty of the injury of subtraction, or lived separate from the other without any sufficient reason; in which case the ecclesiastical jurisdiction compelled them to come together again, if either be weak enough to desire it, contrary to the inclination of the other. 3 Bl.Comm.94.

Writ of restitution. See that title.

Sovereign immunity. A judicial doctrine which precludes bringing suit against the government without its consent. Founded on the ancient principle that "the King can do no wrong," it bars holding the government or its political subdivisions liable for the torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inference from legislative enactment. *Maryland Port Admin. v. I.T.O. Corp. of Baltimore*, 40 Md.App. 697, 395 A.2d 145, 149. The federal government has generally waived its non-tort action immunity in the Tucker Act, 28 U.S.C.A. § 1346(a)(2), 1491, and its tort immunity in the Federal Tort Claims Act, 28 U.S.C.A. § 1346(b), 2674. Most states have also waived immunity in various degrees at both the state and local government levels.

The immunity from certain suits in federal court granted to states by the Eleventh Amendment to the United States Constitution.

See also Foreign immunity; Federal Tort Claims Act; Suits in Admiralty Act; Tucker Act.

United States. This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. *Hooven & Allison Co. v. Evatt*, U.S.Ohio, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252.

Union. An organization of workers, formed for the purpose of negotiating with employers on matters of wages, seniority, working conditions, fringe benefits, and the like.

A league; a federation; an unincorporated association of persons for a common purpose; as, a trade or labor union. A joiner of separate entities. *State ex rel. Dawson v. Dinwiddie*, 186 Okl. 63, 95 P.2d 867, 869.

A popular term in America for the United States; also, in Great Britain, for the consolidated governments of England and Scotland, or for the political tie between Great Britain and Ireland.

See also Agency shop; Bargaining unit; Craft union; Credit union; Decertification; Labor organization; Labor union; Open shop; Preferential shop; Right-to-work laws.

Professional. One engaged in one of learned professions or in an occupation requiring a high level of training and proficiency. *Reich v. City of Reading*, 3 PA Cmwlth. 511, 284, A.2d 315, 318.

professional judgment. The judgment exercised by a professional man in a bona fide manner and in reference to a matter within the scope of his profession. 41 Am Jlst Phys and S § 103.

Fiduciary /fed(y)úwsh(iy)ery/. The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.

A term to refer to a person having duties involving good faith, trust, special confidence, and candor towards another. A fiduciary "includes such relationships as executor, administrator, trustee, and guardian." ABA. Code of Judicial Conduct, Canon 3C(3)(b). A lawyer is also in a fiduciary relationship with the client.

Fiduciary capacity. One is said to act in a "fiduciary capacity" or to receive money or contact a debt in a "fiduciary capacity," when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such offices or relations as those of an attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer.

Fiduciary duty. A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law (*e.g.*, trustee, guardian).

Fiduciary or confidential relation. A very broad term embracing both technical fiduciary relations and those informal relations which exist wherever one person trust in or relies upon another. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal. Heilman's Estate, Matter of, 37 Ill.App.3d 390, 345 N.E.2d 536, 540.

A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each just repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust*, landlord and tenant, etc.

See also Confidential communications.

professional misconduct. Conduct of an attorney at law which shows him to be unfit or unsafe to manage the business of others in the capacity of a lawyer. 7 Am J2d

Attys § 25. Conduct that tends to bring reproach on the legal profession or to injure it in the favorable opinion of the public. *Wernimont v. State*, 101 Ark 210, 142 SW 194. The conduct of a physician which is dishonorable or disreputable in connection with the practice of his profession, which demonstrates incompetency and unfitness for such practice; or is substantially in conflict with the ethics of the profession. 41 AM J1st Phys & S § 49.

See misconduct of attorney; misconduct of physician.

misconduct of physician. Professional misconduct or conduct apart from the practice of the profession which demonstrates immorality, personal characteristics, and disposition rendering a person unfit for the practice of medicine. 41 Am J1st Phys & S §§ 49, 54, 57.

See professional misconduct.

Misconduct. A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. *People v. Sigal*, 249 C.A.2d 299, 57 Cal.Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree of recurrence as to manifest wrongful intent or evil design. *Wilson v. Brown*, LA. App., 147 So.2d 27, 29. *See also* Wanton Misconduct.

107. Misconduct in Office • The necessity that the public's business, in governmental offices of all kinds, be conducted with minimum standards of honesty has led to the recognition by the courts of three different kinds of offenses: (a) doing an act which is wrongful in itself, called *malfeasance*, (b) doing an otherwise lawful act in an unlawful manner, called *misfeasance*, or (c) omitting to do an act required by the duties of the office, called *nonfeasance*.

Misconduct in office. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. *See also* Malfeasance; Misfeasance.

malpractice. The violation of a professional duty to act with reasonable care and in good faith without fraud or collusion, as in the case of a public accountant, 1 AM J2d Accts § 15, or a beautician, *Ocean Acci. & Guarantee Corp. v. Herzberg's Inc.*, (CA8 NEB) 100 F2d 171. By an attorney at law:—the failure to exercise on behalf of his client the knowledge, skill, and ability ordinarily possessed and exercised by members of the legal profession, whereby an actual loss is caused the client. 7 Am J2d Attys §§ 167 *et seq*. By physician or surgeon:—the wrong, for which a physician or surgeon is answerable to his patient where it results in injury to the patient, consisting in the want of that reasonable degree of learning, skill, and experience which ordinarily is possessed by others of his profession, the omission to exercise reasonable care and diligence in the exertion of his skill and the application of his knowledge, or his failure to exert his best judgment in the case entrusted to him. 41 Am J1st Phys & S §§ 79, 82. A cause; of action predicated by law on the relation which exists between physician and patient, although supported by some cases on the theory of liability under a contract implied by law. 41 Am J1st Phys & S § 79.

Malpractice. Professional misconduct or unreasonable lack of skill. This term is usually applied to such conduct by doctors, lawyers, and accountants. Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those entitled to rely upon them. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. *Matthews v. Walker*, 34 Ohio App.2d 128, 296 N.E.2d 569, 571, 63 O.O.2d 208. *See also* Discovery rule; Standard of care.

Legal malpractice. Consists of failure of an attorney to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in performance of tasks which they undertake, and when such failure proximately causes damage it gives rise to an action in tort. *Neel v. Magna, Olney, Levy, Cathcart and Gelfand*, 6 Cal.3d 176, 98 Cal.Rptr. 837, 838, 491 P.2d 421.

Medical malpractice. In medical malpractice litigation, negligence is the predominant theory of liability. In order to recover for negligent malpractice, the plaintiff must establish the following elements: (1) the existence of the physician's duty to the plaintiff, usually based upon the existence of the physician-patient relationship; (2) the applicable standard of care and its violation; (3) a compensable injury; and, (4) a causal connection between the violation of the standard of care and the harm complained of. *Kosberg v. Washington Hospital Center, Inc.*, 129 U.S.App.D.C. 322, 394 F.2d 947, 949. *See also* Captain of the ship doctrine; Continuous Treatment Doctrine; Discovery rule; Maltreatment.

Maltreatment. In reference to the treatment of his patient by a surgeon, this term signifies improper or unskillful treatment; it may result either from ignorance, neglect, or willfulness; but the word does not necessarily imply that the conduct of the surgeon, in his treatment of the patient, is either willfully or grossly careless. *See also* Malpractice (*Medical malpractice*).

Nonfeasance /nónfíyzens/. Nonperformance of some act which person is obligated or has responsibility to perform; omission to perform a required duty at all; or, total neglect of duty. *Desmarais v. Wachusett Regional School Dist.*, 360 Mass. 591, 276 N.E.2d 691, 693. As respects public officials, "nonfeasance" is substantial failure to perform a required legal duty, while "misfeasance" is the doing in a wrongful manner that which the law authorizes or requires a public officer to do. *Schumacher v. State ex rel. Furlong*, 78 Nev. 167, 370 P.2d 209, 211.

nonfeasance. The failure to act where duty requires an act. Of public officer:—neglect or refusal, without sufficient excuse, to do that which it is the officer's legal duty to do, whether willfully, or through malice, ignorance, or oversight. *State ex rel. Hardie v. Coleman*, 115 Fla 119, 155 So 129, 92 ALR 988. Of employee:—the failure to enter upon the performance of a duty which the contract of employment imposes upon an employee, Anno: 20 ALR 104 s. 99 ALR 409; the total omission or failure of an employee to enter upon the performance of some distinct duty or undertaking which he has agreed with his employer to do, *Hagerty v. Montana Ore Purchasing Co.*, 38 Mont 69, 98 P 643; the omission to do some act which ought to be performed. A matter of "not doing." 35 Am J1st M & S § 586. Of agent:—the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he as agreed with his principal to do. Anno: 20 ALR 104.

malfeasance. The doing of an act which is positively unlawful or wrong. *Allas v. Rumson*, 115 NJL 593, 191 A 175, 102 ALR 648. An act forbidden by law, or illegal, causing injury to the person or property of another. 35 Am J1st M & S § 588. Of public officer:—the performance of an act in an official capacity that is wholly illegal and wrongful. *People ex rel. Johnson v. Coffey*, 237 Mich 591, 213 NW 360, 51 ALR.[1]

Malfeasance/maélfíyzen(t)s/. Evil doing; ill conduct. The commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. *State ex rel. Knabb v. Frater*, 198 Wash. 675, 89 P.2d 1046, 1048. Malfeasance is a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has no right, or has contracted not, to do. *Daugherty v. Ellis*, 142 W.Va. 340, 97 S.E.2d 33, 42. It differs from "misfeasance" and "non-feasance" (*q.v.*).

Misfeasance /mísfíyzens/. The improper performance of some act which a person may lawfully do. "Nonfeasance" means the omission of an act which a person ought to do; "misfeasance" is the improper doing of an act which a person might lawfully do; and "malfeasance" is the doing of an act which a person ought not to do at all. *Compare* Malfeasance.

Misfeazance. *See* Misfeasance.

misfeasance (mis-fézans). The improper doing of an act which a person might lawfully do. *Greenberg v. Whitcomb Lumber Co.*, 90 Wis 225, 63 NW 93. The unlawful and injurious exercise of lawful authority, or the doing of a lawful act in an unlawful manner. *Allas v. Rumson*, 115 NJL 593, 181 A 175, 102 ALR 648. The performance of a duty or act which one ought or has a right to do, but in a manner such as to infringe upon the rights of others. Anno: 10 ALR 104.

misfeasance in office (mis-fézans in ofís). The performance by a public officer in his official capacity of a legal act in an improper or illegal manner. *State ex rel. Hardie v. Coleman*, 115 Fla 119, 155 So 129, 92 ALR 988. A common-law offense, generally termed "official misconduct," and composed of the commission of a series of unlawful acts. *State v. Bolitho*, 103 NJL 246 261, 136 A 164, 172.

misfeasant (mis-fézant). A person guilty of misfeasance; a trespasser.

misfeasor. Same as misfeasant.

There is a distinction between "nonfeasance" and "misfeasance" or "malfeasance"; and this distinction is often of great importance in determining an agent's liability to third persons. "Nonfeasance" means the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he has agreed with his principal to do; "misfeasance" means the improper doing of an act which the agent might lawfully do, or, in other words, it is the performing of his duty to his principal in such a manner as to infringe upon the rights and privileges of third persons; and "malfeasance" is a doing of an act which he ought not to do at all.

Compare Malfeasance; Misfeasance.

Impeach. To accuse; to charge a liability upon; to sue. To dispute, disparage, deny, or contradict; as, to impeach a judgment or decree, or impeach a witness; or as used in the rule that a jury cannot "impeach their verdict". To proceed against a public officer for crime or misfeasance, before a proper court, by the presentation of a written accusation called "articles of impeachment". *See* Impeachment.

Impeachment. A criminal proceeding against a public officer, before a *quasi* political court, instituted by a written accusation called "articles of impeachment"; for example, a written accusation by the House of Representatives of the United States to the Senate of the United States against the President, Vice President, or an officer of the United States, including federal judges. Such federal power of impeachment is provided for in Art. II, § 4 of the Constitution. Under Art. I, § 2, cl. 5, the House of Representatives "shall have the sole Power of Impeachment", and under § 3, cl. 6, "The Senate shall have the sole Power to try all Impeachments". A two thirds vote of the Senate is required for impeachment.

Articles of impeachment. The formal written allegation of the causes for an impeachment, answering the same purpose as an indictment in an ordinary criminal proceeding. Under the above cited constitutional provisions, Articles of Impeachment are initiated by the House of Representatives with the trial conducted by the Senate. *See also* Address (*Bill of address*).

Impeachment. The act of discrediting a person or a thing. Calling the integrity or ability of a person into question. The imputation of fault or of defective performance, particularly that of a public officer. *Shanks v. Julian,* 213 Ky 291, 303, 280 SW 1081; 1085. Showing imperfection or error, for example, attacking the certified record on appeal by comparing it with the transcript. 4Am J2d A & E § 503. Questioning the authenticity of a document or the veracity of a witness.

To impeach, as applied to a person, is to accuse, to blame, to censure him. It includes the imputation of wrongdoing. To impeach his official report or conduct is to show that it was occasioned by some partiality, bias, prejudice, inattention to, or unfaithfulness in, the discharge of that duty; or, that it was based upon such error that the existence of such influences may be justly inferred from the extraordinary character or grossness of that error. *Bryant v. Glidden,* 36, 47.

impeachment court. A court for the trial of an impeached officer. 20 Am J2d Cts § 34. The upper house of a legislative body. 20 Am J2d Cts § 34.

In the impeachment of an officer of the United States, the accusation is made by the House of Representatives, and tried by the Senate, under section 3 of article I of the United States Constitution. In some of the states the same procedure has relegated impeachment cases to the courts. Re John J. Marks, 45 Cal 199.

impeachment of account. Questioning correctness of an account. 1 Am J2d Accts § 35.

impeachment of acknowledgment. Disproving the facts stated in the certificate. 1 Am J2d Ack § 98.

impeachment of award. A proceeding at law or in equity for the setting aside of an arbitration award which is void or where cause for setting it aside may be shown. 5 Am J2d Arb & A § 167.

impeachment of public officer. Seeking the removal of a public officer upon charges, formally made, of the commission of a crime or of official misconduct or neglect. Technically, the adoption of articles of impeachment upon inquiry by the lower house of Congress or the legislature, the filing of such articles with, and their acceptance by, the United States Senate in the case of a federal officer, or the upper house of the legislature or court of impeachment in the case of a state officer. 43 Am J1st Pub

APPENDIX D—Case Law Authorities

1 ALR4th 884 (Bifurcation of insanity defense is required)

Ake v Oklahoma, , 470 US 68, 84 LEd2d 53, 105 S Ct 1087 (When insanity defense is raised, procedural safeguards must be provided to prevent erroneous deprivation of liberty)

Alaska Airlines v City of Long Beach, 9C 1991, 951 F2d 977 (Person cannot be punished for refusing to obey a rule that if obeyed would cause a constitutional injury)

Allore v Jewell, , 94 US 506, 24 LEd 260 (A person who cannot conduct his own affairs because of mental impairment cannot appoint an agent for that purpose)

Anchem v GAF (DCDC 1972) 57 FRD 81 (Discovery rules apply to U S Government in litigations in same fashion as to other litigants)

Anderson v Creighton, 1987, 483 US 635, 97 LEd2d 523, 107 S Ct 3034 (Rights are those rights which are so commonly known and practiced that a person would reasonably anticipate that adverse conduct would violate those rights)

Anderson v Luther, DC Ill 1981, 521 F Supp 91 (Federal officials may be sued directly for violating a persons constitutional or civil rights)

Apton v Wilson, 1974, 506 F2d 83 (Failure to state a claim does not deprive the court of subject matter jurisdiction or federal question jurisdiction)

Armstead v Pingree, Md Fla 1986, 629 F Supp 273 (Mentally disabled can state a claim of action for violation of civil rights)

Battle v Central State Hospital, 11C 1990, 898 F2d 126 (excessive medication complaint is not a frivolous issue and evidence of mental illness would support possibility of excessive medication)

Bee v Greaves, 10C 1984, 744 F2d 1387 (Pre-trial detainees have more rights than convicted prisoners and can be forcibly medicated only when the inmate is violent and only when there are no other less intrusive or restrictive alternatives)

Belkin v Wauchara Cty (ED Wis 1987) 675 F Sup 459 (Can discover name of confidential informant when the informant is responsible for the false information)

Best v District of Columbia, DCC 1990, 743 F Supp 44 (Inmates claim that he was video taped without his permission was sufficient to claim a constitutional violation of right to privacy even if the video tape was used only by prison officials and not given to the public)

Birl v Wallis, DC Ala 1985, 619 F Supp 481 (When private hospital are sufficiently involved with government, it is liable for damages along with other named defendants)

Blodgett v Santa Cruz County, DC Cal 1981, 553 F Supp 1090, affirmed 698 F2d 368 (A Legal theory is sufficient to withstand a dismissal)

Bowen v Massachusetts, 1988, 487 US 879, 101 LEd2d 749, 108 S Ct 2722 (A person is not prevented from invoking the provisions of 5 USC 701-706 merely because the statutes have a provision that it cannot be used when money damages are requested)

Brennan v Engineering Pro (CA Mo 1974) 506 F 2d 299 (Party can discover names and addresses from opposing party of people who have relevant information)

Bresseman v Farrier, 8C 1990, 900 F2d 1305 (Exhaustion of remedy not required when the applicant would suffer retaliation from the administration for exerting a constitutional right)

Burns v Thiokol (CA Ala 1973) 483 F2d 300 (Employment history, background history of employees and even job applicants are discoverable)

Califano v Sanders, 1977, 430 US 99, 51 LEd2d 192, 97 S Ct 980 (28 USC 1331 confers jurisdiction upon the court even when 5 USC 701-706 does not whenever a violation of constitutional rights are asserted)

Carlson v Green, 1980, 446 US 14, 64 LEd2d 15, 100 S Ct 1468 (A Bivens action is available even when the allegations could also support a tort claim. Victims of constitutional wrongs have a right to recover money damages from federal officials . . . even punitive damages which is prohibited in the tort claim provisions)

Carter v Carter Coal Co, 298 US 238, 80 LEd 1160, 56 S Ct 855 (The powers of the Federal Government are only those powers enumerated specifically in the constitution and no power should be given to the federal government which cannot be found in the constitution (see also 13 Led 257)

Castle v Sangamo (CA Fla 1984) 744 F2d 1464 (Names and addresses of witnesses opposing party has interviewed is discoverable)

Cester v Fortenberg (CA 5 Tex 1988) 849 F2d 1550 (Discovery is permitted to overcome claim of qualified immunity if alleged facts has chance of being proven)

CH v Sullivan, D Minn 1989, 718 F Supp 726 (Double celling is a 1331 action because the injuries suffered fall under the 8th amendment when it concerns incarcerated prisoners)

Chapman v Rhodes, SD Ohio 1977, 434 F Supp 1007 (Schizophrenics are particularly prone to violence engendered by "close quartering" (double celling) and frustrations. Double celling leads to increased tensions, both proportionate and geometric, and aggressive anti social characteristics. (1017)

Checki v Webb, 5C 1986, 785 F2d 534 (No physical injury is required before civil action can be filed)

Chitwood v Dowd, 8C 1989, 889 F2d 781 (Exhaustion of remedy not required when applicant makes claim in good faith and when the court deems there are special circumstances which would nullify the requirements)

Committee v Seaborg (1971) 463 F2d 788 (Governments refusal to produce documents must be balanced against persons need for the documents)

Corn v City of Lauderdale Fla, 11C 1990, 904 F2d 585 (when the actual issues of a claim had not been specifically litigated, res judicata did not apply)

Crane v Battelle, SD Cal 1989, 127 FRD 174 (Defect is serving summons is remedied by serving the attorney for the party)

Creek v Laski, 227 NW 817, 248 Mich 425 (A Judgment in a former action does not bar subsequent action when causes are different even though the actions may relate to the same subject matter)

Cruzan v Missouri, 1990, 497 US ____, 111 LEd2d 224; 110 S Ct (Even incompetent people who are unconscious have the right to choose what shall, or shall not, be done to their own bodies)

Data v Systems, 9C 1977, 557 F2d 1280 (When there are no statutory methods for resolving an issue, then dismissal is inappropriate)

Davidson v DC Board of Medicine, DC App 1989, 562 A2d 109 (agency cannot enforce rules that are founded upon statutes and the statutes have been repealed)

Davis v Hubbard, ND Ohio 1980, 506 F Supp 915 (Drugging a person just for the convenience of staff is unconstitutional. There is no way to predict how a person will react to a drug or how the drug is tolerated, so extra precautions must be taken. 50-56 percent of all patients suffer severe side effects from antipsychotic medication. Treatment that is unnecessary or excessive constitutes a punishment)

Davis v Romey (DC Pa 1972) 55 FRD 337 (When U S Attorneys Office acts as agent for defendant in handling information, that information is discoverable)

DC v Mitchell, 1983, 463 US 206, 77 LEd2d 580, 103 S Ct 2961 and 664 F2d 265 (Federal Government can be sued for money damages when it breaches a trust and inflicts constitutional injury)

Dexter v Hall, 15 Wall 9, 21 Led 73 (A Lunatic needs more protection than a minor and is protected in courts of law and courts of equity)

Director v General Dynamics Corp, 2C 1990, 900 F2d 506 (The courts have the power and authority to override the interpretation of a rule or regulation made by any agency)

DL Auld Co. v Chroma Graphics, Fed C 1983, 714 F2d 1144 (Dismissal may not issue when material facts require a trial)

Donovan v Fitzsimmons (DC Ill 1981) 90 FRD 583 (Union records discoverable)

Door v US, 195 US 138, 49 LEd 128, 24 S Ct 808 (The constitution of the U.S. is the only source of power authorizing action by any government agency)

Dreyer v Jalet, DC Tex 1972, 349 F Supp 452, affirmed 479 F2d 1044 (Prisoners have the right to sue the federal government and access to the court is for the purpose of fulfilling the petition clause of the 1st amendment)

Drope v Missouri, , 420 US 162, 43 LEd2d 103, 95 S Ct 896 (A person may not be subjected to a trial when his sanity is in question)

Duncan v Town of Blacksburg Va, DV Va 364 F Supp 643 (Res judicata is not applicable when the party is challenging the constitutionality of a law even if parties are the same and party had failed to raise the issue in a previous case)

Dunn v Clarke, 8 Pet 1 (Service upon the other party's counsel is sufficient for a law suit)

Eanes v State, Md App 1990, 564 A2d 724, enforcing a rule in an "ad hoc" fashion makes the government agency liable for wrongs inflicted)

Eastwood v Department of Corrections, 10C 1988, 846 F2d 627 (allegations that acts of officers were ongoing and continuing series of acts which constituted harassment stated in claim of action)

Edinburgh Consol Independent School Dist, DC Tex 1983, 554 F Supp 974 (when different legal theory is used to file a successive claim, the claim is not barred by res judicata even though the same set of allegation may have been evident)

Falls River Realty Inc v City of Niagara Falls N Y, CANY 1985, 754 F2d 49 (A contract with the federal government is governed by common law and subject matter jurisdiction under federal question exists when one member of the contract is the government)

Farley v Henderson, 9C 1989, 883 F2d 709 (Motion to dismiss would be treated on appeal as motion for summary judgment when the moving party went outside the pleadings)

Faulkner v McLocklin, ND Ind 1989, 727 F Supp 486 (Envelopes which bore printing and designations sufficiently to alert prison employees that mail was privileged mail, regardless of writings to indicate it was "legal mail" was a violation to open mail when the envelopes were clearly printed with name of attorney and indications that it came from an attorney)

Federal Deposit Ins Corp v Fisher, D Minn 1989, 727 F Supp 1306 (Non moving party in motion to dismiss should be allowed adequate time for discovery)

Federal Housing v Burr, 309 US 242, 84 LEd2d 724, 60 S Ct 488 (When Congress launched the federal government into the corporate world, then the government is like any other private enterprise and has the right to sue and be sued)

Fendler v US BOP (9C 1988) 846 F2d 500 (Agency must maintain accurate current records for discovery purposes)

Finnerty v Cowen, 2C 1974, 598 F2d 979 (Exhaustion of remedy not necessary when the person is challenging the administrative remedy process itself)

Flanagan v Munger, 10C 1989, 890 F2d 1557 (When government employee inflicts a constitutional injury, the government as a entity is liable along with the employee, see *Hedge v County,* 7C 1989, 890 F2d 4)

Fleming v Dept of Public Safety, 9C 1988, 837 F2d 401 (Government entities are "persons" and are liable for civil rights violations)

Fominas v Kelley, WD NY 1990, 739 F Supp 139 (Supervisors can be held liable by failing to remedy wrong after learning of it)

Franklin Hosp v La, (Md 1990) 569 A2d 693 (Punitive damages awarded for refusing to provide discovery)

Freeman v Department of Employment, DC App 1990, 575 A2d 1200 (Haphazard enforcement of rules makes an agency liable for damages)

Gibson v Babcox, DC Ill 1984, 601 F Supp 1156 (Even when warden makes a sworn affidavit that he had no knowledge of the act, he is liable if the laws mandated a certain requirement and he failed to provide that requirement)

Globe Security v Sterling, 556 A2d 731 (Training manual is admissible as evidence and is relevant material)

Gopson v Bass River, 1979, 82 FRD 122 (When it may be likely that the party can serve the other party ultimately, then dismissal of case is not appropriate)

Gould v U.S., (4C 1990) 905 F2d 738 (A search for truth is discoverable)

Griggs-Ryan v Smith, 1C 1990, 904 F2d 112 (Court of appeals must view the entire record most favorable to non-moving party to dismiss)

Gabbos v Davis, 11C 1991, 941 F2d 1479 (Exhaustion not necessary when the government admits the attempts would be futile . . . such as admitting they are not authorized to pay money or to do something else)

Gamed v General Acct (ND Ind 1986) 112 FRD 213 (when one agency gives records to another agency and the second agency is not a party to the action, the records are discoverable)

Hamilton v Canal Barge Co (DC La 1974) 395 F Supp 975 (Investigators reports were discoverable when reports contained names of witnesses who were involved in the incident as eye witnesses)

Hamilton Stores Inc v Hodel, 10C 1991, 925 F2d 1272 (Money damages and non money damages can be sought in district court against federal officials even when aspects of the claim could be construed to be a tort claim)

Hammie v SSA, (Ed Pa 1991) 765 F S 1224 (Prisoner did not have to name a representative to receive his medical records . . . he was entitled to discover them for himself and to posses them)

Hawkins v Department of Mental Health, DC Mich 1981, 89 FRD 127 (the service of process is merely to inform the opposing parties of a pending action against them, and even though the papers may be improper, if the service accomplishes that purpose, then service is proper and to dismiss the case on the grounds that the service was inadequate is improper)

Hendrickson v Griggs, ND Iowa, 672 F Supp 1126 and 856 F2d 1041 (Neither *res judicata* nor collateral estoppel are applicable when there is no evidence to support theory that the specific issue in question was actually litigated)

Henderson v Zurn Ind, (SD Ind 1990) 131 FRD 560 (Insurance policies discoverable)

Hern v Rhay, (DC Wash 1975) 68 FRD 574 (prisoners discovery is not denied even when prison officials said they acted in good faith)

Hodgeson v Minnesota, 1990, ____ US ____, 111 LEd2d 344, ____ S CT ____ (Rules and regulations which impinged upon a persons life, liberty, and due process interests is unconstitutional and every violation is a violation against that person) IT IS IMPOSSIBLE TO LIVE FOR A CAUSE WITHOUT FIRST BEING PREPARED TO DIE FOR THAT CAUSE

Hoffman v United Tele, (D Kan 1987) 117 FRD 440 (Former employees names and addresses are discoverable)

Hollingworth v Barbour, 4 Pet 486, (Service of a mere irregularly or erroneous process is still sufficient to bring a party into court)

Hoover v Holston Valley Community Hospital, (DC Tenn 1981, 545 F Supp 8 (Parties in an action must be given ample opportunity to conduct discovery before summary judgment can be entertained in a civil rights case)

Hoverdale v School Bd, (Mi Fla 1989) 128 FRD 287 (Even when defendant files a motion for summary judgment, the discovery continues so that the plaintiff can rebut statement in the motion also)

Howard v City of Birmingham, 9C 1991, 937 F2d 1376 (The code of Federal Regulations are laws and have the force and effect of laws. They are not just remedial, regulatory, administrative, or guidelines)

Howell v Tanner, 11C 1981, 650 F2d 610 (Malicious infliction of bodily injury constitutes deprivation of property interests within the due process principles)

Hudson v Chicago Tribue, 11C 1984, 743 F2d 1187 (Union is liable for the acts of the members on the job along with the agency) affirmed 475 US 292 89 LEd2d 232, 106 S Ct 1066)

Illinois v Justice of New Hampshire District Court, DNH 1990, 735 F Supp 43 (*Res judicata* applies only to those matters actually litigated and decided in a previous trial, not to those issues which could have been raised but was not)

Independent v Digre, 8C 1990, 893 F2d 987 (When the administration cannot provide the relief requested, then exhaustion of remedy is not required)

In Re Grand Jury Investigations (CA Pa 1979) 599 F2d 1224 (Interview notes and memoranda is discoverable)

In Re Karen Quinlan, 355 A2d 662 (Civilly committed persons have the full panoply of rights accorded to all free citizens)

In Re Sunrise (ED Pa 1989) 130 FRD 560 (Knowledge, Mental Impressions, opinions, and advice are discoverable)

In Re US Fin Sec, (DC Ca; 1975) 74 FRD 497 (generally, unfettered discovery to all relevant material is permitted and not limited to facts admissible at the trial)

Inspir Con v Lumbermens, (DCNY 1973) 60 FRD 205 (work sheets and comments if relevant to issues in legal action are discoverable)

Johnson v McKaskle, 7C 1984, 498 (an ongoing violation is not barred by the principles of *res judicata*) 727 F2d 498

Kaminsky v Rosembaum, SDNY 1990, 737 F Supp 1309 (when officials know, or should know, of specific dangers and risks or hazards to inmate and fail to take action to remedy it, they are liable)

Keifer v Reconstruction, , 306 US 381, 83 LEd 784, 59 S Ct 516 (Federal agencies do not have immunity from law suits merely because they do the work of the government)

Kiblen v Retail Credit, (DC Wash 1977) 76 FRD 402 (if there is a chance the pled matter can succeed, then protective order does not overcome discovery)

Klingele v Eikenberg (CA9 Wash 1988) 849 F2d 409 (when discovery is still pending, dismissal of complaint is error)

Lawrence Motor Co v First Nat Bank, 5C , 238 F2d 625 (for *res judicata* purposes in order for the actions to be regarded as the same the two actions must relate to the same identical specific subject matter . . . when the subject matter is similar, but essentially different, there is no identity)

Laxalt v McClatchy (1987) 809 F2d 885 (Person does not have to show need for information to obtain it under privacy act)

Lehnert v Ferris Faculty (DC Mich 1983) 556 F Supp 316 (Union records discoverable)

Lloyd v Cessna Aircraft Co. (DC Tenn 1976) 434 S Supp 4 (names of witnesses whom the defendants were going to rely on were discoverable)

Mandel v Doe, 11C 1989, 888 F2d 783 (Physicians assistants are liable for deliberate indifference to medical needs)

Marcus v Sullivan, 7C 1991, 926 F2d 604 (Exhaustion of remedy not necessary when there is an issue of law and the requirement to exhaust remedy is not a fundamental right) See also *Taylor v Kincheloe*, 9C 1990, 920 F2d 599

Martin v Catalanolia, 5C 1990, 895 F2d 1040 (Exhaustion not required when it would cause an imminent change in life conditions which would be adverse to the applicant)

Martin v Easton Pub Co (DC Pa 1980) 85 FRD 312 (Identity of experts and consultants are discoverable specifically employed by defendants)

Martin v Thornburgh, 5C 1990, 901 F2d 1241 (The court may move on its own motion to not require the exhaustion of remedy)

Mason v Ciccone, 8C 1976 footnote 11, (Exhaustion of remedy unnecessary in unusual cases and the administrative remedy process must be meaningful)

Mbank New Braunfels v Federal Deposit Insurance Group, ND Tex 1991, 772 F Supp 313 (When an agency acts in an arbitrary, capricious manner or abuses its discretion, or acts otherwise not in accord with law, it is liable for wrongs and District court has jurisdiction)

McDonald v Mabee, , 243 US 90, 61 Led 608, 37 S Ct 343 (In the service of process, whatever method is most likely used to reach the opposing party is the least that ought to be required)

McElya v Sterling Med (WD Ten 1990) 129 FRD 510 (discovery in medical malpractice suit under Federal Tort Claim was subject to provisions of Rules of Civil Procedure . . . not government regulations)

McLeod v Quarles (CA5 Tex 1990) 894 F2d 1482 (defendants alleging that discovery requests were not specific and overboard and would cause hardship on them was insufficient for protective order—discovery granted)

McReynolds v Maupin (D Or 1990) 132 FRD 67 (Conversations recorded in Medical records are discoverable—even between doctor and attorney)

McMalcik v Lensink, D Conn 1990, 732 F Supp 299 (Institution must provide a mentally disabled with reasonable care and safety free from unreasonable restraint and must receive adequate training)

McSooh Equity Resources v Sullivan, 7C 1991, 927 F2d 963 (Exhaustion of remedy not required when it imposes undue hardship)

Miles v Bell Heli (DC Ga 1974) 385 F Supp 1029 (Accident reports prepared by defendants in anticipation of law suit was discoverable)

Miree v US, DC Ga 1980, 490 F Supp 768 (Dismissal of a civil suit for failure to serve process or to serve inappropriately is not proper)

Mitchell v Forsythe, 1985, 472 US 511, 86 LEd2d 411, 105 S Ct 2806 (U S Attorney General does not have absolute immunity)

Mitchel v US, 9 Pet 711, 9 Led 283 (When the United States comes into court to enforce its rights, it comes as any other suitor)

Morales-Borreo v Lopez, D PR 1989, 710 F Supp 32 (When the violations against prisoner is constitutional, the warden can be sued in his official capacity and in the individual capacity when the warden condones the violation by encouragement, or taking no action to stop it)

Mueller v Walker (D Or 1989) 124 FRD 654 (The reports of an internal affairs investigation is discoverable)

Mullins v U S Bankruptcy court, 9C 1987, 882 F2d 1385 (there is no significant difference in a 42 USC 1983 Civil Rights action and a 28 USC 1331 Claim when addressing the issue of immunity, liability, and responsibility. Federal officials are on equal footing with state officials when rights are violated)

Murray v Koehler, SD NY 1990, 734 F Supp 605 (When warden knows that an act is in violation of the law, and still does not remedy the wrong inflicted (even just to protect his employees) he is liable for the wrongs of the employees)

Melson v Kroeger Co. DC Colo 1983, 578 F Supp 691 (Private actors are nevertheless joint participants with government officials) -

Nixon v US, DC 1991, 938 F2d 239 (a claim for money damages requires the court to look deeper into the case and when constitutional issues are raised, the court has jurisdiction)

N.O. v Callahan, (D Mass 1986) 110 FRD 637 (Plaintiff could discover names and addresses of every 5th person treated at hospital. . . .)

Pate v Robinson, , 383 UA 375, 15 LEd2d 815, 86 S Ct 836 (When the issue of insanity is raised, the judge must impanel a jury to conduct a sanity hearing)

Pamstead v U.S., 1928, 277 US 438, 72 LEd 944, 48 S Ct 564 (The framers of the constitution conferred upon a person the right to be left alone and no right is more cherished by civilized people and the government cannot impinge upon that right. Americans are protected in their beliefs, thoughts, sensations, and emotions.

Pantsy v Dept of HUD (DC App 1991) 936 F2d 1300 (If information was released to one—it must be released to all)

Parker v Lane, ND Ill 1988, 688 F Supp 353 (Prisoners manual is sufficient to create a liberty and property interest for due process claim)

Payne v Howard (DCDC 1977) 75 FRD 465 (defendant had to surrender names and addresses of patients he treated as he treated the plaintiff so the plaintiff could contact the people to ascertain if they would disclose their records)

Penic v Columbus, DC Ohio 1981, 519 F Supp 925, affirmed 663 F2d 24 (When government official fails to perform a statutory duty and injury occurs liability attaches to the official and the agency)

Pennsylvania v Ritchie (1987) 94 LED2d 40 (Refusal of agency to disclose the information in violation of parties due process was error)

Penry v Lynaugh, , ____ US ____, 106 LEd2d 256. 109 S CT 2934 (Common law prohibits the punishment of lunatics and idiots)

People v Siragusa, 1975, 366 NYS2d 336, 81 Mich2d 368 (Suing the Federal government in a civil suit is a fundamental right)

Pleasant Hill v US (DC Mo 1973) 58 FRD 97 (Even if information is exempt from disclosure under 5 USC 552a and 18 USC 1905 concerning government officials, information is discoverable under Rule 26 if relevant to issues in the action)

Pritchett v Lanier, DC 1991, 766 F Supp 442 (Prison officers have an affirmative duty to prevent other officers from violating the right of inmates)

Pusey v Del Alc Bd (SC Del 1991) 596 A2d 1367 (agency may not hold a hearing then withhold information from party on grounds of confidentiality)

Quarles v Sager, 11C 1982, 687 F2d 344 (issue preclusion is not applicable when there were issues in the case which could have been resolved but was not)

Racine Ed v Racine Uni (DC Wis 1979) 82 FRD 461 (discovery not denied just because it invaded the privacy of the person)

Ramon v Lamm, 10C 1980, 639 F2d 559 (A government must provide an (illegible) shelter (celling) which does not cause his degeneration or threaten his mental or physical well being)

Ray v US DOJ (11C 1990) 908 F2d 1544 (Denial of release of information must be clearly justified)

Reagin v Broglin, ND Ind 1988, 693 F Supp 736 (When warden reviews a complaint in the administrative remedy process and fails to remedy the complaint then he is liable with the offender for injury)

Reiner v West Village Association, 2C 1985, 768 F2d 31 (Federal Courts have subject matter jurisdiction over a claim that agency violated law)

Reuten v Dahm, D Neb 1988, 707 F Supp 1121 (Prison warden is liable when warden is ultimately responsible for the establishment of rules and the rules are violated)

Rhoades v Penfold, 7C 1983, 694 F2d 1043 (When party asserts the unconstitutionality of a proceeding, the issue is not barred by *res judicata* when it would appear that it would be manifestly unjust not to hear the case even when the case could have been raised previously)

Rhodes v Chapman, 1981, 452 US 337, 69 LEd2d 59, 101 S Ct 2392 and at 434 F Supp 1007 and 624 F2d 1099 and 69 LEd2d 1067 (Double celling is not cruel and unusual punishment per se. . . .)

Richardson v US (3C 1972) 465 F2d 845 (If CIA's statutes and rules offered Constitution, CIA cannot rely upon the statute or rule to deny discovery)

Riggins v Nevada, 1992, 51 CRL 2082, 2099 (Force medicating a pre-trial detainee violated the constitution)

Rodriquez v Cty of Springfield (D Mass 1989) 124 FRD 654 (when informant is named in a report, then that name is discoverable)

Rolnick v Al Israel Airlines Ltd, DCNY, 551 F Supp 261 (Dismissal is inappropriate when the disputed facts are peculiarity within the custody of only one party and only one party has knowledge of facts)

Scouler v Craig (DNJ 1987) 116 FRD 494 (Police officers personnel file holding citizens complaints were discoverable)

Shah v Quinlan, 5C 1990, 901 F2d 1241 (Need not exhaust remedy when there is imposed an unreasonable delay and unnecessary irregularities, or when the procedures are reduced to futile, meaningless, inadequate process)

Sheetz v Morning Call, 1990, 130 FRD 34 (Conspiracies between union and employer to violate civil rights of others is tort)

Slakan v Porter, 1984, 737 F2d 368 (Warden is liable for acts of employees)

Smith v Sullivan, , 611 F2d 1039 (Inadequate funding does not excuse the perpetuation of unconstitutional condition of prison confinement such as double celling)

Spell v McDaniel (DCNC 1984) 591 F Supp 1090 (officers history of disciplinary actions were discoverable overcoming work product privilege)

Spock v David, 3C 1982, 469 F2d 1047 (Rights under 1st Amendment are not beyond reach of federal question)

Tax Analyst v US DOJ, 643 FS 740, 845 F2d 1060, 106 LEd2d 112 (Denial information cannot be just for the convenience of the agency—and even court records are discoverable)

Taylerson v American Airlines, DCNY 1960, 183 F Supp 882 (An action may not be dismissed if only one of the allegations is true and the others are not)

Teague v Lane, 1989, 489 US 288, 103 LEd2d 334, 109 S Ct 1 (Exhaustion of Remedy not required when attempts would be futile gestures)

Terry Properties v Standard Oil, 11C 1986, 799 F2d 1523 (Government bodies and agencies are people who can be sued directly for civil rights violations)

Thomas v Riddle, ND Ill 1987, 673 F Supp 262 (When court rules on the constitutional issue, the claim is not barred by *res judicata* because the same claim may be violation of another constitutional clause)

Thompson Trading v Allied, DRI 1989, 123 FRD 417 (Court must take the allegations of a complaint as true even when the opposing party makes a sworn affidavit that the complaint is not true and the court cannot dismiss for lack of personal jurisdiction)

Trapnell v Ralston, 8C 1987, 819 F2d 182, (When government official violates clearly established rights, or which the official would suspect to be a right, the official is liable for damages)

Traylor v City of Amarillo Tex, 7C 1974, 492 F2d 1156 (Federal court have jurisdiction over case that alleges constitutional violations)

Trop v Dulles, 1958, 356 US 86, 2 LEd2d 630, 78 S Ct 590 (Merely relabeling a rule or regulation or procedure which in effect still violated the rights of a person does not shield the rules, regulation or procedures from scrutiny by the courts)

Tusso v Smith, 156 A2d 783, 38 Del 587 (The mere fact that cases may be similar in the same subject matter does not establish *ipso facto* that they are the same)

US v Bliss, ED Mo 1987, 667 F Supp 1298 (Judgment of a case cannot be made if the non moving party has not had sufficient time to conduct discovery)

US v Bryant, 1987, 670 F Supp 840 (Good professional judgment must be exercised in the prescription of anti-psychotic drugs)

U.S. v Charters, 4C 1988, 863 F2d 302 (Could not forcible medicate a pre-trial detainee even when incompetent)

US DOJ v Julian (1988) 100 LEd2d 1 (Records requested must be disclosed or clear reason must be stated)

US v Lucas, 11C 1990, 898 F2d 1554 (Exhaustion of remedy not required when the person challenges a statute)

US v Nobles (1975) 45 LEd2d 141 (Work product doctrine immunity is not absolute)

US v O'Grady, 22 Wall 641 (When the government is sued, it is subject to the same rules as anyone else being sued and is bound by the same judgment)

US v Scott, , 437 US 82, 57 LEd2d 65, 98 S Ct 2187 (Congress cannot enact laws to punish the insane)

US on Behalf and for the Benefit of Army Athletics Association v Reliance Insurance Company, 9C 1986, 799 F2d 1382 (Courts should allow a party discovery when the party has not had an opportunity to get discovery before the court would consider a motion to dismiss)

US v Stanley, 1987, 483 US 669, 97 LEd2d 550, 107 S Ct 3054 (In a 1331 claim, a violation of constitutional rights by government officials give rise to an action even without statutory authority)

US v State of Michigan, DC Mich 1978, 460 F Supp 637 (Right of access to the courts is only one aspect of the petition clause of the U.S. Constitution and right of access to the court should not be confused with the petition clause. The petition clause is the right to sue the federal government see also *California Motor Express*, 1972, 404 US 508, 30 LEd2d 642, 92 S Ct 609)

U.S. v Watson, 8C 1990, 893 F2d 970 (Inmate can be forced medicated for his disruptive behavior, but not if he is not combative, disruptive, violent, or disorderly)

Venerable v Thornburgh, 8C 1976, 531 F2d 867 (Exhaustion of remedy is not necessary when the applicant challenges the underlying constitutionality of his incarceration)

Vir Ele v Sun Ship (DC Va 1975) 68 FRD 397 (Expert opinion not immune from discovery if denial of discovery would be unfair to requesting party)

Wagner v Herman (7C 1990) 902 F2d 578 (Name of informant discoverable)

Wahad v FBI (SDNY 1990) 132 FRD 17 (Name of confidential informant discoverable)

Waldrop v Evans, 11C 1989, 871 F2d 1030 (A doctor is guided by the reasonable knowledge that other doctors share in the profession given the same circumstance and processing the same knowledge of facts, would conclude that his acts were either lawful or unlawful)

Washington v Harper, 1990, 494 US 210, 108 LEd2d 178, 110 S Ct 1028 (An inmate may be forced medicated only when he exhibits violent behavior)

Washington Post v Min (560 A2d 517) Favors disclosure even National Security information (DC App 1989)

Weissman v Fruchtman, SDNY 1987, 658 F Supp 547 (Claim is not barred by *res judicata* when previous claim did not raise money damage issue)

West v Atkins, NC 1988, 487 US 42, 101 LEd2d 40, 108 S CT 2250; *Ort v Pinchback*, 11C 1986, 786 F 2d 1105 (When a private person has a contract with a government agency and the private party commits violations or Constitutional tort against a prisoner, the acts of the private person are the acts of the government agency and the agency is bound in liability by contract)

Williams v White, 8C 1990, 897 F2d 942 (Placing a person in seclusion or segregation for no articuable reason without due process violates the constitution)

Willis v Ciccone, 8C 1974, 506 F2d 1011 (When inmate alleges an infringement of a constitutional right he need not exhaust administrative remedies and the conclusions and judgments made by the prison administration is not binding upon the courts nor controlling)

Ali v Barry, DC App 1988, 550 A2d 1130 (Intentional reprisals is and tort of intentional negligence, not simple negligence)

Allen v Illinois, , 4778 US 364, 92 LEd2d 296, 106 S Ct 2988 (A civil label on a law is not always reflective of the law for the effects may be so punitive that it negates the intent of it being non-punitive)

Anderson v Covington, 1981, 483 US 635, 97 LEd2d 523, 197 S Ct 3034 (The law does not permit a physician to have unfettered discretion in the treatment of his patient even to the involuntarily committed and it does not allow the physician to substitute his judgment for that of the patient by any form or artifice)

Anderson v Creighton, 1987, 483 US 635, 97 LEd2d 523, 107 S Ct 3040 (The law does not permit a physician to substitute his own judgment for the judgment of the patient in any form or artifice)

Anderson v Department of Mental Health, ND App 1985, 498 A2d 679 (If a law or rule imposes a disability for the purpose of punishment, vengeance, deterrence, or retribution (that is, to reprimand the wrongdoer, to deter others, etc.) it is considered a penal law or rule. If the law has a penal and non penal effect, then the controlling factor is the intent of congress) citing *Trop v Dulles*, 1958, 356 US 86, 2 LEd2d 630, 75 S Ct 590

The clear legislative intent of congress, regarding the insanity acquittee, is not to prove that he committed the acts, but not to punish him for the acts

Anderson Brothers Ford v Valencia, , 452 US 205, 68 LEd2d 783, 101 S Ct 2266 (A thing may be within the letter of the law and yet not within the law because it is not within the spirit of the law and the intentions of its makers) See also *Calif Sav Loans v Guerra*, 479 US 272, 93 LEd2d 613, 107 S Ct 683

Andrews v Ballard, 1980, (even emotions, feelings, and sensations are protected by the Constitution and a belief cannot be punished)

Andrews v Ballard, 1980, 485 F Supp 1038 (Cannot punish expression that is foolish, absurd, and which does not conform to any standards)

Archie v City of Racine, 7C 1987, 826 F2d 480 (When a government official puts a person in danger by another person and then fails to protect the person from that danger, it is liable for violating that "special relationship" [such as double celling prisoners])

Ashe v Swenson, 1970, 397 US 436, 25 LEd2d 469, 90 S Ct 1189 (Double jeopardy protections apply in civil proceedings as well as criminal proceedings)

Ashe v Swenson, 1970, 397 US 436, 25 LEd2d 469, 90 S Ct 1189 (Self-incrimination rights apply in civil actions as well as criminal actions)

Association for Retarded Citizens of North Dakota v Olson, D ND 1982, (Government must provide residents of mental institution with private space and reasonable access to such places of privacy; and the treatment given must be the least restrictive)

Associated for Retarded Children of N D v Olson, D ND 1982, 501 F Supp 473 Informed consent is questionable in light of mental disabilities . . . least restrictive environment right exists . . . officials must provide private space to mentally disabled

Baraldini v Thornburgh, CADC 1989, 884 F2d 615 and *Baraldini v Meese*, 1988, 691 F Supp 432 (Even ideas and beliefs which are subversive to the government may not be punished)

Battle v Anderson, 564 F2d 393 (Government must protect patients from environment and conditions which will cause a deterioration or degeneration of mental status or where there would be needless or unnecessary suffering)

Bee v Greaves, 1984, 744 F2d 1387 (Government is prohibited from attempts to control a persons' mind, thoughts, and ideas, and the capacity to produce those ideas)

Belchar v Ciccone, WD No 1971, 336 F Supp 125 (The U S Court of Appeals for the Eighth Circuit has said that the conditions at the Federal Medical Centers are "shocking" and "intolerable" and a person who was there only 4 months suffered grave abuse and mistreatment and deterioration of mental status)

Belkin v Wauchara Cty, (ED Wis) 1987) 675 F Sup 459 (Can discover name of confidential informant when the informant is responsible for the false information)

B.H. v Johnson, ND Ill 1989, 715 F Supp 1387 (Even though *Youngberg* asserted that the professional cannot be held liable if judgment is made because of budgetary constraints, a lack of funding, or established alternatives, is not a factor to be determined when Constitutional rights are violated)

Bird v US, 10C 1991, 949 F2d 1079 (a person contracted by the government, is a government employee for liability)

Boyce v Alizaduh, 4C 1979, F2d 948 (Doctor ignored patients assertions that he was allergic to medication)

Brady v Parsons Co. Md App 1990, 572 A2d 1115 (When agency assumes duty to provide safety within specific area, that duty extends to not only the employees but to contracted employees as well and a breach of statutory duty constitutes negligence)

Braunfield v Brown, 1961, 366 US 599, 6 LEd2d 563, 81 S Ct 1114 (if the effects of a law impeded the rights of a person, then the law is unconstitutional even when it is only indirectly applied)

Brennan v Engineering Pro (CA Mo 1974) 506 F 2d 299 (party can discover names and addresses from opposing party of people who have relevant information)

Breeneman v Madigan, 1972, 343 F Supp 128 (It is unconstitutional to classify unconvicted people in the same manner as convicted prisoners to determine conditions of confinement and it furnishes no justification for treating the unconvicted as convicted)

Brogsdale v Barry, DC Cir 1991, 926 F2d 1184 (Double celling is unconstitutional if it endangers the safety of the inmates or is egregious)

Brooks v Flaherty, 4C 1990, 902 F2d 253 and 699 F Supp 1178 (Certification and accreditation is prima facia proof that the hospital gives adequate treatment, but a lack of certification and accreditation is prima facia proof of a lack of adequate treatment)

Burns v Thiokol, (CA Ala 1973) 483 F2d 300 (Employment history, background history of employees and even job applicants are discoverable)

Buthy v NY Commissioners, 1987, 818 F2d 1046 (Patient have a right to an Individualized care just as prisoners are given the right to individualized care under 18 USC 4081)

Cameron v Tomes, D Mass 1992, 783 F Supp 1511 (Rigid enforcement and the application of rules and policies on mental patients was an unconstitutional failure to exercise good professional judgment. Government officials may not show deliberate indifference to a mental patients individual mental health needs. Transporting a civil patient in shackles and under guard is unnecessary restraint and harmful to patients treatment . . . Double housing mentally ill is unconstitutional . . . confrontational manner of treatment is harmful to mentally ill and is proscribed . . . failure to accommodate the individualized need for treatment is unprofessional judgment . . . Forcible strip search of mentally ill without consulting their doctors is unconstitutional . . . before enforcement of any rule . . . patients doctors must be consulted to ascertain if such would be harmful to patient or create adverse psychological condition . . . it is not enough to suspect that mental patients may abuse drugs, conducting tests or search, absent consultation with patients doctors, is unconstitutional . . . discipline of mentally ill civilly committed based upon rules for the general population was not good professional judgment . . . Constitution requires that the government place the patient in an environment in which complete professional judgment may be exercised with interference by government officials)

Case v Bixter, SD Ohio 1981, 518 F Supp 1277 (Even failure to treat a boil is serious medical indifference)

Canteriro v Wilson, WD Ky 1982, 546 F Supp 174 (Psychological treatment must be individualized to the patients specific needs . . . cannot use an overall therapy for all mentally ill patients)

Cantebury v Spence, DC App 1972, 464 F2d 772 (Professionals must exercise "due care" in their judgments and must conform to existing laws and not upon existing traditions or customs . . . the professional cannot force a treatment upon an unwilling competent person)

Castle v Sangamo (CA Fla 1984) 744 F2d 1464 (names and addresses of witnesses opposing party has interviewed is discoverable)

Cester v Fortenberg (CA 5 Tex 1988) 849 F2d 1550 (Discovery is permitted to overcome claim of qualified immunity if alleged facts has chance of being proven)

CH v Sullivan, 8C 1990, 920 F2d 483 (Double celling is unconstitutional if it causes increased violence or endangers safety and security of person)

Chelshire Hospital v New Hampshire-Vermont Hosp Ser, 1C 1982, 689 F2d 1112 *U S Trust Co of NY v NJ*, DC App 1977, 431 US 1, 52 LEd2d 92, 97 S Ct 1505 (Prison environment and conditions adversely affects the expectations of an insanity acquittee—it is harsh, oppressive, and causes regression and deterioration rather than promoting good mental health)

Child v Pellegrin, 6C 1987, 822 F2d 1382 (Mentally disabled entitled to more considerate treatment than convicted prisoners . . . courts must make certain that professional judgment is exercised)

Clark v Cohen, ED Pa 1985, 613 F Supp 684 (Professional decisions must be based on medical or psychological criteria and not on exigency, administrative convenience, or other non-medical criteria) (affirmed 794, F2d 79, 3C 1986)

Cochran v Quattrocchi, 1C 1991, 949 F2d 11 (It is unconstitutional to place a person into a position where he must waive or surrender one constitutional right to be granted another constitutional right)

Cody v Hillard, 8C 1987, 830 F2d 912 (Double celling unconstitutional when it leads to increased violence or when it creates other intolerable conditions) see 799 F2d 447, 804 F2d 440, 599 F Supp 1025

Colling v Schoofield, 1972, 344 F Supp 257 and (1973) 363 F Supp 1152 (The unconvicted must be treated better than the convicted) citing *Hamilton v Love* 328 F Supp at 1191)

Commercial National Bank in Shreveport v Parsons, CCA La 1944, 144 F2d 231 (Even though under Rule 2 of FRCP, 28 USC, all distinctions to the forms between the actions of law and suits of equity have been abolished, the substantive federal power is embedded in the Constitution and remains unaltered)

Commonwealth Bank & Trust Co N A v Russell, 3C 1987, 825 F2d 12 (people in institutional confinement have a fudiciary relationship with those who have authority over them in that they have a "special relationship" and are dependent upon the custodial authorities for all needs, safety, and security (see also *Davidson v O'Lone*, 752 F2d 817, 3C 1984

Committee v Seaborg, (1971) 463 F2d 788 (Governments refusal to produce documents must be balanced against persons need for the documents)

Conklin v Hancock, 171, 334 F Supp 1119 (A pre-trial detainee cannot be punished at all much less suffer cruel and unusual punishment)

Covington v Harris, DC App 1969, 419 F2d 617 (If inmates are locked in and have limited ground privileges, and the outdoor activities are conducted in a walled in or fenced in area similar to a prison . . . then it is a prison and not a hospital) Mental incompetence is also a mental illness and the government cannot treat one afflicted as such as a criminal. Nor can the government confine a person who has not been judged guilty of a crime in any facility similar to a prison

Covington v Harris, DC App 1969, 419 F2d 617 (Professionally, a doctor owes a voluntary patient a careful canvass of alternatives to treatment, and he owes at least as much to a patient confined for care and treatment against his will)

Croft v Harder, DC Kan 1989, 730 F Supp 342 (every institutionalized person is entitled to an "individualized" program of care and treatment in the least restrictive conditions feasible)

Cruzan v Missouri, 1990, 497 US ____, 111 LEd2d 224, 100 S Ct ____ (the government may not abridge the right of an involuntarily committed person who is not accused or convicted of criminal wrongdoing)

Cummings v Dunn, 8C 1980, 630 F2d 649 (Denial of Prescribed medication)

Daly v US, 9C 1991, 946 F2d 1467 (Physician had duty to inform patient of any abnormal test results [including X-ray results])

Davet v Maccarone, DRI 1991, 775 F Supp 492 (need not show physical symptoms of emotional distress to recover damages for emotional distress)

Davidson v DC Board of Medicine, DC App 1989, 562 A2d 109 (Agencies cannot enforce a rule or regulation which was based upon a law or statute and that statute was later repealed)

Davis v Hubbard, ND Ohio 1980, 506 F Supp 915 (Officials cannot force medicate a person just for control or for the convenience of the staff)

Davis v Romey (DC Pa 1972) 55 FRD 337 (When U S Attorneys Office acts as agent for defendant in handling information, that information is discoverable)

D.C. v Howard, DC App 1991, 588 A2d 683 (Medical Technician liable for not examining patient more closely)

DC v Mitchell, DC App 1987, 533 A2d 969 (Physician must use professional judgment in the care and treatment of prisoners)

DC v Mitchell, DC App 1987, 533 A2d 629, 864 F2d 695 (Physician owes the same standard of care to prisoners as does the physician owes the non-prisoner)

DC v Sterling, DC App 1990, 578 A2d 1163 (Allowing an assault on an inmate is negligence tort when the medical staff had knowledge or could foresee such assaultive behavior)

Dileo v Nugent, MD App 1991, 592 A2d 1126 (Forced medication unconstitutional when such medication is contrary to evidence)

Director v General Dynamics Corporation, 2C 1990, 900 F2d 506 (court has the power to override any administrative or agency rule and the agency's interpretation of that rule.)

Doe by Roe v Gaughan, D Mass 1985, 617 F Supp 1477 (Consultation with a mental health professional is mandatory before proceeding with violation of patient's liberty or property rights)

Doe v Gallinot, 1981, 657 F2d 1017 (it is indisputable that a commitment to a mental hospital can cause adverse social consequences to the person. Although the symptoms of the person may indicate a grave mental disability, it is not conclusive that he has a mental disability because the patient may be under heavy sedation and may not be alert enough to articulate his thoughts or to communicate normally, he may be inhibited by his security surroundings, he may be intimidated, threatened, and distrustful of the staff and is afraid and exceptionally wary of the slightest request or requirement (such as signing a document), but he may feel obligated to cooperate with the staff because of the psychological coercion by the staff because of their authority role and because the staff is in absolute control of nearly every aspect of the patient's life for some lengthy period of time)

Doe v New York City Department of Social Services, 2C 1981 (if government officials fail to provide proper and adequate care and treatment their omissions constitute nonfeasance and they are liable for the damages inflicted)

Donovan v Fitzsimmons, (DC Ill 1981) 90 FRD 583 (Union records discoverable)

Eanes v State, Md 1990, 564 A2d 724 (when a rule is applied "*ad hoc*" the agency is liable)

Egelston v State University College at Geneseo, 2C 1976, 535 F2d 752 Complaint should not be dismissed before discovery unless it is clear that no facts can be proven to support the claims

Elekno v NYC Health Dept, 2C 1991, 940 F2d 775 (if doctor places patient in danger, then doctor should be removed from the patient case)

Employment Division of Department of Human Resources of Oregon v Smith, 1990, 494 US ____, 108 LEd2d 876, 110 S Ct 1595 (government cannot punish the expression of a belief even when that belief is false and may constitute a violation of misconduct)

Employment Division of Department of Human Resources of Oregon v Smith 1990, 494 US ____, 108 LEd2d 876, 110 S Ct 1595 (A person has the right to believe or not to believe)

Estelle v Gamble, 1976, 429 US 97, 50 LEd2d 251, 97 S Ct 285 (8th Amendment proscribes barbarous punishment and punishments incompatible with evolving standards of decency in an evolving maturing society, and proscribes disproportionate treatment, deliberate indifference, and the wanton or unnecessary infliction of pain)

FBI v Abrahamson, , 456 US 615, 72 LEd2d 376, 102 S Ct 2054 (When there are two different interpretations of a statute, then the court must look to that interpretation which reflects the general scheme and purpose of the law and which is in harmony with the intent of Congress)

Federal Savings and Loans Co v Texas Real Estate Counselors, 5C 1992, 955 F2d 261 at 265 (While all individuals in society owe a duty to others to exercise reasonable care to avoid injury to others, the professionals, by virtue of their special skills and expertise, are held to a higher standard of responsibility and the professionals' duty requires that the professional use the skills and care in performance of his duties which are commensurate with the requirements and standards of his particular profession)

Fendler v US BOP (9C 1988) 846 F2d 550 (Agency must maintain accurate current records for discovery purpose)

Figueriredo-Torres v Nickel, Md App 1991, 584 A2d 69 (Professional cannot engage in practice which will demoralize the patient nor engage in conduct which is destructive to the patient's ego development, self-respect, and mental recovery)

Foy v Greenblott, Cal App 1983, 190 Cal Rptr (Government should minimize interference with a patients individual autonomy including personal privacy and social interaction)

Franklin v Gupta, Md App 1990, 567 A2d 524 (A hospital and its employees is like any other master-servant relationship and employer is liable for the acts of its employees including professional physicians, nurses, and all other medical and non medical personnel)

Franklin Hosp v La (Md 1990) 569 A2d 693 (Punitive damages awarded for refusing to provide discovery)

Freeman v DC Department of Employment, DC App 1990, 575 A2d 1200 (a haphazard enforcement of rules and regulation is impermissible and constitutes an unprofessional tort)

French v Owens, 7C 1985, 777 F2d 1250 (Double celling unconstitutional)

Fromader v Wayne, 766 F Supp 909 (Failure to treat condition so obvious that even a lay person would recognize necessity of medical attention would constitute an assault)

Frost v Ciccone, WD Mo 1970, 345 F Supp 899, (The Federal Medical Centers are administered and supervised under the authority of the U. S. Attorney General and are, therefore, "prisons" for those accused of crimes and those convicted of crimes)

The term PROFESSIONAL MISCONDUCT can also be applied to prison officials as the courts have determined that they are professional in the field of penology and hence, the approach of the "hands off doctrine" (*Garcia v Steele*. 8C 1951, 193 F2d 276).

Gary H v Hegstrom, 9C 1987, 831 F2d 1430 (when staff members ignore their own regulations, it represents a substantial departure from acceptable professional judgement which makes them liable for the acts)

Gillespie v Civiletti, 9C 1980, 629 F2d 637 (U S Government must insure that jails and non-federal facilities meet standards of care, safety, and security for the care and treatment of Federal inmates in those facilities)

Globe Security v Sterling, 556 A2d 731 (Training manual is admissable as evidence and is relevant material)

Goodman v Wagner, ED Pa 1982, 533 F Supp 255 (Failure to follow doctors orders also..denial of prescribed medication)

Gould v U.S. (4C 1990) 905 F2d 738 (A search for truth is discoverable)

Hamed v General Acct (ND Ind 1986) 112 FRD 213 (when one agency gives records to another agency and the second agency is not a party to the action, the records are discoverable)

Hamilton v Canal Barge Co (DC La 1974) 395 F Supp 975 (Investigators reports were discoverable when reports contained names of witnesses who were involved in the incident as eye witnesses)

Hammie v SSA (EdPa 1991) 765 F S 1224 (Prisoner did not have to name a representative to receive his medical records . . . he was entitled to discover them for himself and to possess them)

Henderson v Zurn Ind (SD Ind 1990) 131 FRD 560 (Insurance policies discoverable)

Henty v Ciccone, 8C 1976, 440 F2d 1052 and *Maurietta v Ciccone*, WD Mo 1969, 305 F Supp 775 (the United States Medical Centers for Federal Prisoners are "prisons" and not "hospitals." They are administered as prisons, they are operating as prisons, and they function as prisons.)

Hern v Rhay (DC Wash 1975) 68 FRD 574 (prisoners discovery is not denied even when prison officials said they acted in good faith)

Hetrick v Weimer, Md App 1986, 508 A2d 522 (A physician has the duty to apply reasonable appropriate skills and care to save his patient and to apply the same skills to avoid killing his patients)

Hodgson v Minnesota, 1990, 497 US ____, 111 EEd2d 344, 110 S CT ____ (the government may not abridge the rights of a free world person without compelling justification)

Hoffman v United Tele (D Kan 1987) 117 FRD 440 (Former employees names and addresses are discoverable)

Holmes v Robinson, Md App 1990, 578 A2d 294 (Liberty interest of person is created by rules and regulations that has mandated language and limits officials discretion)

Hoverdale v School Bd, Md Fla 1989) 128 FRD 287 (Even when defendant files a motion for summary judgment, the discovery continues so that the plaintiff can rebut statement in the motion also)

Howard v City of Burmingham, 9C 1991, 937 F2d 1376 (the Codes of Federal Regulations are Laws and not just remedial or regulatory rules and guidelines)

Hurst v Phelps, 5C 1978, 579 F2d 940 (Refusal to take an inmate to a doctor's appointment was cruel and unusual)

Inmates of the Suffolk County Jail v Kearney, D Mass 1990, 734 F Supp 501 (Double celling is not permitted despite Supreme Court ruling that such is permissible in some circumstances)

In Re Grand Jury Investigations (CA Pa 1979) 599 F2d 1224 (Interview notes and memoranda is discoverable)

In Re Melton, Md App 1990, 565 A2d 635 (If psychologist relied exclusively on hearsay material and data, then judgment is invalid)

In Re Sunrise (ED Pa 1989) 130 FRD 560 (Knowledge, Mental Impressions, opinions, and advice are discoverable)

In Re US Fin Sec (DC Ca; 1975) 74 FRD 497 (Generally, unfettered discovery to all relevant material is permitted and not limited to facts admissible at the trial)

Inspir Con v Lumbermens (DCNY 1973) 60 FRD 205 (Work sheets and comments if relevant to issues in legal action are discoverable)

International Eateries of America v Brown, SD Kan 1989, 726 F Supp 432 (Political ideologies cannot be punished)

Issac v Jones, ND Ill 1981, 529 F Supp 175 (When the officer delayed in getting medical attention, officer was liable)

Jackson v Kelley, 10C 1977, 557 F2d 735 (Medical treatment and care is mandated by statute and is therefore not discretionary and officials may be held liable for negligence as well as violations of constitution and laws)

Jenkens v McKeithen, 1969, 395 US 411, 23 LEd2d 404, 89 S Ct 1843 (The material allegations of the complaint should be treated as true and construed favorably in favor of the plaintiff and the complaint should not be dismissed unless it appears that No Set of Facts can support the claim)

Jennings v NYS Office of Mental Health, ND Ohio 1991, 786 F Supp 376 (The cases of a civil commitant and a convicted prisoner is inapposite and rights of civil commitant cannot be abrogated by mere virtue of the confinement)

Johnson-El v D.C., DC App 1991, 579 A2d 163 (Misconduct of employees is actionable)

Johnson v Duffy, 9C 1978, 588 F2d 740 (Officials liable for damages if their acts set in motion a series of acts made by others (Such as forcing prisoners to double cell) which would cause others to inflict Constitutional injury)

Johnson v Levine, 4C 1988, 588 F2d 1378 (Psychology seclusion status similar to disciplinary seclusion is condemned and unconstitutional)

Jones v Evans, ND Ga 1982, 544 F Supp 769 (Confiscation of prescribed medication)

Jones v Wittenburg, ND Ohio 1971, 323 F Supp 93, and 330 F Supp 407 and 440 F Supp 60 and 456 F 2d 854 (No person may be punished except by due process of law and punishment initiated as a matter of form and routine without and semblance of fairness and due process is proscribed by the Constitution)

Joseph v Brierton, ND Ill 1976, 431 F Supp 50 (Fatal administration of a medication was cruel and unusual and negligent)

Joseph v D C Board of Medicine, DC App 1991, 587 A2d 1085 (It is impermissible, dishonorable, and unconstitutional for a doctor to falsify records, make a false medical report, or to commit perjury in such actions)

Journey v Vitek, 8C 1982, 685 F2d 239 (Handicapped prisoners can sue Prison officials for discrimination against the handicapped)

K.H. Through Murphy v Morgan, 7C 1990, 914 F2d 846 (Unprofessional judgment is equal to ineffective counsel in a criminal proceeding)

Kiblen v Retail Credit (DC Wash 1977) 76 FRD 402 (If there is a chance the pled matter can succeed, then protective order does not overcome discovery)

Klingele v Eikenberg (CA9 Wash 1988) 849 F2d 409 (When discovery is still pending, dismissal of complaint is error)

Knect v Gillman, 8C 1973, 488 F2d 1136 (Using drugs as punishment unlawful)

LaFountain v Webb Industries Corp, 3C 1991, 951 F2d 544 (Tort law distinguishes misfeasance [which creates a new risk for the person] and non feasance [which may not worsen the situation but does not alleviate the injury] also . . . if society imposes a duty to act, even absent law, and the person does not act, or acts improperly, that person is liable for the injury)

Landman v Royster, 197 333 F Supp 621 (Imprisonment itself can produce the symptomology of a mental illness without the person actually being mentally ill. When the staff cause the person to be oppressed and subjects the person to abuse and mistreatment, the patient may exhibit the symptoms of serious mental illness, but when removed from his condition of imprisonment, the symptoms disappear. These symptoms include anxieties, thoughts of destruction, easy fatigue ability, diminished sexual abilities, potency, and feelings, a loss of other feelings which is termed "flattened affect", and he may develop numerous psychosomatic disturbances such as general aches and pains, headaches, arthritic pain, gastric disorders, headaches, backaches, choking, breathing disorders. These symptoms (called the ganser syndrome) is not a true mental illness and disappears when the person leaves his imprisoned environment)

Landman v Royster, 1973, 333 F Supp 621 and 554 F2d 1292 (The cause of adverse psychological behavior in prison can be the confinement itself which produces a false symptom of mental illness and the symptoms disappear upon release)

Langley v Coughlin, SDNY 1989, 715 F Supp 522 (Government's duty does not arise from knowledge of persons predicament nor from the government's expressions of an intent to help the person, the affirmative duty to provide professional proper and adequate care and treatment arises from the limitation it has imposed upon the person and his freedom to act in his own behalf and the Youngberg rule applies regardless of the reason for involuntary confinement)

Lashawn v Dixon, DDC 1991, 762 F Supp 959 (The rights of a person under a Civil custody are far greater than the rights of a person in criminal custody)

Laxalt v McClatchy (1987) 809 F2d 885 (Person does not have to show need for information to obtain it under privacy act)

Lee by Wetzel v Alleghany Regional Hospital, WD Va 1991, 778 F Supp 900 (1 million dollars damages was appropriate when patient alleged that hospital transferred her without stabilizing her and that resulted in deterioration of existing condition)

Lehnert v Ferris Faculty (DC Mich 1983) 556 F Supp 316 (Union records discoverable)

Lelsz v Kavanagh, ND Tex 1986, 629 F Supp 1487 (Professional judgment must be based upon what is appropriate to standards of care, not upon what is available . . . no right to keep a person confined if community placement is in best interest of patient) see also ND Tex 1987, 673 F Supp 828

Liscio v Warren, 2C 1990, 901 F2d 274 (Doctor liable for "mismanagement" of patient)

Leonen v Johns-Manville Corporation, DNJ 1989, 717 F Supp 272 (Civil penalties imposed upon a person can constitute a "punishment" and is entitled to double jeopardy protection)

Lloyd v Cessna Aircraft Co (DC Tenn 1976) 434 F Supp 4 (Names of witnesses whom the defendants were going to rely on were discoverable)

Lock v Jenkins, 7C 1981, 641 F 2d 488 (The court will intervene to protect constitutional rights and treatment of the unconvicted under the burdensome conditions as the convicted prisoner is unconstitutional and even when the unconvicted is treated less favorably, it is unconstitutional)

Lynch v Baxley, 11C 1984, 744 F2d 1452 (Jails are for incarceration of criminals not to confine those awaiting ~~civil~~ commitments)

Mannon v DC Board of Medicine, DC App 1989, 558 A2d 329 (Patient need not show that the professional "intended" to do harm . . . a conscious indifference to the outcome or consequences of the professional judgment is sufficient to make the professional liable)

Martin v Easton Pub Co (DC Pa 1980) 85 FRD 312 (Identity of experts and consultants are discoverable specifically employed by defendants)

Mateyko v Felix, 9C 1991, 924 F2d 824 (A lack of proper and adequate training and supervision amounts to deliberate indifference)

Matter of Meyerland Co, 5C 1990, 910 F2d 1257 (Federal question is established if one party is a federal corporation)

Maurietta v Ciccone, WD Mo 1969, 305 F Supp 775 (The Federal Government needs a Federal Civil Hospital suitable to house and treat the mentally ill which it does not have even the Federal Medical Centers for Federal Prisoners (Citing *Pavlick v Harris*, WD Mo 1963, 222 F Supp 79, *Kurnava v U.S.*, WD Mo 1966, 222 F Supp 822) see also
U.S. v Pardue, D Conn 1973, 354 F Supp 1377
Wyatt v Stickney, Md Ala 1972, 344 F Supp 387
U.S. v Walker, ND Cal 1971, 335 F Supp 705
U.S. v Jackson, ND Cal 1969, 306 F Supp 4

Rouse v Cameron, 1966, 125 US App DC 366, 373 F2d 451

Martareall v Kelley, SDNY 1972, 349 F Supp 575

Cook v Ciccone, WD Mo 1970, 312 F Supp 822

Baxstrom v Herold, 1966 383 US 107, 15 LEd2d 620, 86 S Ct 760

Schuster v Herold, 2C 1969, 410 F2d 1071

McCord v Maggio, 5C 1991, 927 F2d 844 (When defense of budgetary constraints is asserted the court must investigate assertion and determine if there were alternatives available for the patient, and if so, the claim of budgetary constraints in Youngberg must fail)

McCray v Burrell, 4C 1980, 622 F2d 705 (Observation rooms for the mentally ill condemned under many circumstances)

McDonald v U.S., Md Pa 1991, 767 F S 1295 (Failure to exercise ordinary care violates professional judgment and is negligence and malpractice)

McElya v Sterling Med (WD Ten 1990) 129 FRD 510 (Discovery in medical malpractice suit under Federal Tort Claim was subject to provisions of Rules of Civil Procedure . . . not government regulations)

McLeod v Quarles (CA5 Tex 1990) 894 F2d 1482 (Defendants alleging that discovery requests were not specific and overboard and would cause hardship on them was insufficient for protective order—Discovery granted)

McReynolds v Maupin (D Or 1990) 132 FRD 67 (Conversations recorded in Medical records are discoverable even between doctor and attorney)

Meridian Star Inc v Milliais, 1989, 349 So2d 1332 (Cannot punish expression even when it is unreasonable and vituperative)

Metcalf v State of Kansas, D Kan 1986, 626 F Supp 1179 (Professional failed to order tests in spite of "classical text-book symptoms")

Migra v Warren City School District, 1984, 465 US 75, 79 LEd2d 56, 104 S Ct 892 (A person is entitled to one law suit for each cause of action and issue he possesses)

Mihalcik v Lensink, D Conn 1990, 732 F Supp 299 (Professional judgment should have known that a meaningful individualized treatment plan was necessary to treat the mentally disabled)

Miles v Bell Heli (DC Ga 1974) 385 F Supp 1029 (Accident reports prepared by defendants in anticipation of law suit was discoverable)

Mills v Rogers, 1982, 457 US 291, 73 LEd2d 16, 102 S Ct 2442 (Involuntarily committed people not convicted of criminal wrongdoing have a right to prevent bodily intrusion or mind intrusion or mind alteration)

Multier v Beron, 4C 1990, 896 F2d 848 (Failed to order an examination or an evaluation when symptoms were clear of a condition warranting exam)

Mississippi Employment Section v McGlothin, Miss 1990, 556 So2d 324 (a person cannot be punished for his expression of a belief even if that belief is recognized as being false and even when that belief may constitute a misconduct violation)

Mobile County Jail Inmates v Purvis, SD Ala 1982 (Coercive law may be legal, or remedial, but unconstitutional)

Monroe v Bombard, SDNY 1976, 422 F Supp 211 (Rules and Regulations could not be enforced on mentally ill if it produced serious adverse medical consequences . . . psychological also?)

Moore v Moore, Miss 1990, 558 So2d 834 (No person may be compelled to testify against himself or give information about himself which might render him liable, regardless whether he is in a civil, criminal, or quasi-criminal proceedings)

Morgan v Foretich, DC App 1988, 546 A2d 407 (If compliance with the laws causes greater harm and injury than breaching the laws, then complying with the laws are unconstitutional)

Mueller v Walker, (D Or 1989) 124 FRD 654 (The reports of an internal affairs investigation is discoverable)

Negron v Ward, SDNY 1978, 458 F Supp 748 (Placement in seclusion ward for reasons related to punishment was unconstitutional and damages awarded)

Nelson v Heyne, ND Ind 1973, 355 F Supp 451 and in 7C 1974, 491 F2d 312 (Patients have a right to individualized care and treatment specific and particularized to the patient's own peculiar status and condition)

N.O. v Callahan (D Mass 1986) 110 FRD 637 (Plaintiff could discover names and addresses of every 5th person treated at hospital. . .)

Norton v Turner, ED Va 1977, 427 F Supp 138, Affirmed in part 581 F2d 390, 4C 1978 (Negligence can become a constitutional violation)

OK Sand and Gravel Co v Mort, SD Ind 1992, 786 F Supp 1442 (A fiduciary relationship exists when an agency codifies that relationship)

Pantsy v Dept of HUD (DC App 1991) 936 F2d 1300 (If information was released to one—it must be released to all)

Parham v J. R., 1979, 442 US 584, 61 LEd2d 101, 99 S Ct 2493 (Judgment of professionals must be neutral, detached, and in the best interest of the patient not the officials and the medical professionals do not have unbridled discretionary powers)

Parks v Reynolds, 10C 1992, 958 F2d 989 (When Petitioner established that a Constitutional violation exists, and that the violation is a proximate cause of his current condition, then it is not an abuse of writ to file the petition)

Parratt v Taylor, 1981, 451 US 527, 68 LEd2d 420, 101 S Ct 1908. (Common law intentional or negligent tort can violate the constitution although it may not violate the 8th amendment)

Partridge v 2 Unknown Police Officers, 5C 1986, 791 F2d 1182 (A psychological or psychiatric condition can be just as serious as any physical pathology and deliberate indifference to those conditions is proscribed by the constitution)

Payne v Howard (DCDC 1977) 75 FRD 465 (Defendant had to surrender names and addresses of patients he treated as he treated the plaintiff so the plaintiff could contact the people to ascertain if they would disclose their records)

Feenhurst State School & Hospital v Halderman, , 451 US 1, 67 LEd2d 694, 101 S Ct 1531 (Court must look to the whole law and to the object of its intent and to the policy and not be guided by a single sentence or a part of a sentence)

Pennsylvania v Ritchie (1987) 94 LEd2d 40 (Refusal of agency to disclose the information in violation of party's due process was error)

People v Dietze, NY 1989, 550 NYS2d 595, 75 NY2d 47, 549 NE2d 1126 (Vulgar and offensive language, even directed at a specific person, or class of people, is protected speech, see also *State v Jansezak*, Me 1990, 579 A2d 736)

Phillips v Thompson, 7C 1983, 715 F2d 365 (at 368) (Officials must provide treatment according to the standards which prevail as the acceptable common standards)

Pleasant Hill v US (DC Mo 1973) 48 FRD 97 (Even if information is exempt from disclosure under 5 USC 552a and 18 USC 1905 concerning government officials, information is discoverable under Rule 26 if relevant to issues in the action)

Posada v Kilpatrick, DC App 1988, 547 A2d 163 (There are 3 elements of malpractice (a) there must be an applicable standard of care (b) there must be a deviation from that standard (c) there must be a causal relationship between the injury and the deviation, but the liability need not be established by an expert. . . even a lay person can render a professional assessment if common knowledge and experience would reveal that injury would not have occurred in the absence of the deviation)

Pritchett v Laniwr, DCC 1991, 766 F Supp 442 (Prison official has the affirmative duty to prevent another prison official from violating the rules or the rights of prisoners)

Project Release v Provost, EDNY 1982, 531 F Supp 1298 and 722 F2d 960 (The field of medicine and its standards are within the judicial review of the courts whenever the acts are measured by the provisions of the Constitution)

Public Citizens v Department of Justice, 1989, 491 US 440, 105 LEd2d 377, 109 S Ct 2558 (When validity of statutes is in question, court must look to see if construction of the statute may be possible and avoid the question but the lawmakers have sworn under oath to uphold the constitution therefore the intent of the law is important as it reflects the intent of Congress)

Pusey v Del Alc Bd (SC Del 1991) 596 A2d 1367 (Agency may not hold a hearing then withold information from party on grounds of confidentiality)

Racine Ed v Racine Uni (DC Wis 1979) (Discovery not denied just because it invaded the privacy of the person)

Ramos v Lamm, 1980, 639 F2d 599 (A facially permissible rule or regulation may still violate the constitutional rights of others if not applied properly)

Ramos v Lamm, 10C 1981, 639 F2d 559 (485 F Supp 122) (Must protect inmate from environment where degeneration is probable)

Rawles v US, 8C 1964, 331 F2d 21 (The facility fit the classification as a "prison" even if it did not fit the classification of a "penitentiary".) Citing *Williams v Steel,* 194 F2d 917, *Kuczynski v US,* 149 F2d 478, *Greenwood v US,* 219 F2d 376

Ray v US DOJ (11C 1990) 908 F2d 1544 (Denial of release of information must be clearly justified)

Rector v Lockhart, ED Ark 1992, 783 F Supp 398 (In challenging the constitutionality of a statute the court must determine if the statute contains particularized substantive standards, and if the statute uses mandatory language. If so then a liberty interest is evident and if the defendants fail to implement the standards in the statute then the petitioner does not abuse a writ in challenging the constitutionality of the application of the statute even when the challenge has been made previously)

Rennie v Klein, 1982, 458 US 1119, 73 LEd2d 1381, 102 S Ct 3506 also 3C 1981, 653 F2d 836 and 3C 1983, 720 F2d 266 (Right to be free of bodily intrusions of forced medication)

Rennie v Klein, DNJ 1978, 462 F Supp 1131, see also 3C 1981, 653 F2d 836 and DNJ 1979, 476 F Supp 1294 (Any excessive treatment is "punishment" and the court must scrutinize what is classified "treatment" to insure that it is treatment and not punishment and that the treatment is proper, adequate, and based upon professional judgment)

Rhodes v Chapmen, 1981, 452 US 337, 69 LEd2d 59, 101 S Ct 2392 (Conditions must not involve the wanton and unnecessary infliction of pain or suffering, nor can they be disproportionate to the reasons for the confinement. . . it cannot deprive the inmate of the constitutional rights nor can it offend the contemporary standards of decency)

Rhodes v Chapman, 1981, 452 US 337, 69 LEd2d 59, 101 S Ct 2392 (Double celling is unconstitutional if such inflicts unnecessary and wanton suffering or is grossly disproportionate to the severity of the crime)

Richardson v US (3C 1972) 465 F2d 845 (If CIA's statutes and rules offend Constitution, CIA cannot rely upon the statute or rule to deny discovery)

Robbins v Burdke, 1990, 739 F Supp 1479 at 1480 (The mentally disabled and mentally ill are vulnerable to abuse and neglect and may have difficulty in recognizing that they have rights, and even if cognizant of the rights many cannot assess the violations and cannot identify even the most egregious abuse. The effects of medication may cause confusion, disorientation, and problems with memory making it difficult not only to recall the abuse but in explaining the abuse. The authoritarian role of the custodians makes the patient passive and submissive to their will and makes the patient afraid or reluctant to take any action which may incur the displeasure of the staff)

Robbins-French v Buddle, DMN 1990, 739 F supp 1479 (Continuing violations of rights constitutes irreparable injury)

Robinson v Maynard, 10C 1992, 958 F2d 1013 (Abuse of writ claims are reviewed under the same standards equating "ends of justice," inquiry and "fundamental miscarriage of justice")

Robinson v Moreland, 8C 1981, 655 F2d 887 (Even a delay of a weekend in providing treatment was libelous)

Rodriquez v City of Springfield, (D Mass 1989) 124 FRD 654 (When informant is named in a report, then that name is discoverable)

Rogers v Evans, 11C 1986, 792 F2d 1052 (Professional administered inappropriate anti-psychotic medication)

Rogers v Okins, DC 1979, 478 F2d 1342, and 1C 1980, 634 F2d 650 (The government cannot control the mind of a person, even in a mental hospital, and giving a person drugs powerful enough to seize and to immobilize the mind is unreasonable seizure proscribed by the 4th amendment)

Rogers v Okins, DC Mass 1979, 478 F Supp 1342, and 1C 1980, 634 F2d 650 (Even the person involuntarily committed to a mental hospital is protected from forced bodily intrusion and attempts to control or alter the mind)

Russello v US, 1983, 464 US 16, 78 LEd2d 17, 104 S Ct 296 (Whenever the statutes do not specifically define the term of a word or phrase, then the courts must assume that the legislation expressed the ordinary meaning of the word or phrase)

**Rutan v Republicial Party of Illinois*, Ill 1990, 497 US ——, 111 LEd2d 52, 110 S Ct 2729 (A person has the right to believe or not to believe, and the right to associate or not to associate, and that choice of the individual shall not be abridged by the government)

Sanders v U.S., 1963, 373 US 1, 10 LEd2d 148, 83 S Ct 1068 (Even if the grounds for a new application was previously determined against the applicant, the case may be reexamined if the ends of justice would best be served)

Santana v Callazo, 1983, 714 F2d 1172 (Confinement of the mentally ill and their living conditions must be scrutinized more closely than the confinement and living conditions of convicted prisoners)

Satana v Collazo, 1C 1986, 793 F2d 41 (professional judgment is a judgment made by a competent person in that persons' field of expertise, whether by education, training, or experience, and a simple "good faith" defense is not available to the professional if that professional made a departure from the common standards employed by others in that field of expertise)

Sawyer v Whitney, 5C 1991, 945 F2d 812 (A review of the standards for an abuse of writ claim must be reviewed in a light most favorable to the petitioner)

Scott v Armstrong, , 146 US 499, 36 LEd 1059, 13 S Ct 148 (Legal and equitable claims cannot be blended together in the Circuit courts of the United States)

Scouler v Craig (DNJ 1987) 116 FRD 494 (Police officers personnel file holding citizens complaints were discoverable)

S.H. v Edwards, 11C 1988, 860 F2d 1045 (Liberty interest in professional judgments—continued confinement is erroneous if confinement and treatment actually results in regression and deterioration [see also *Georgia v McDaniel*, ND Ga 1981, 511 F Supp 1263])

Shaw by Shaw v Stackhouse, 3C 1990, 920 F2d 1135 (Persons entrusted with care and treatment of institutionalized persons should be held to a higher standard of professionalism than prison officials)

Shaw by Strain v Strackhouse, 3C 1990, 920 F2d 1135 (while deliberate indifference standards require recklessly indifferent or grossly negligent, Professional judgment requires only that decision was a departure from the acceptable standards of care) [people who are professionals include Warden, Assistant Warden, Physicians, Program coordinators, unit managers, resident supervisors, service supervisors, nurses, occupational therapists, teachers, and recreation supervisor]

Shields v Burdge, 7C 1989, 874 F2d 695 (Patient has the right to have independent control over his own body and to determine what shall, or shall not, be done to his own body and the patient has the right to override any decision of a psychiatrist or a medical physician in judgments of care and treatment)

Smith v Sampson, 1C 1972, 349 F Supp 268 (a court must not hesitate to strike down a prison regulation which is unconstitutional)

Society for Good Will to Retarded Children v Cuomo, 2C 1984, 737 F2d 1253 (Mentally disabled cannot be punished like prison inmates . . . treatment must be meaningful professional judgment require patients have humane and decent treatment) see also 2C 1990, 902 F 2d 1085

Spell v McDaniel, (DCNC 1984) 591 F Supp 1090 (officers history of disciplinary actions were discoverable overcoming work product privilege)

Stark v Starr, , 94 US 477, 24 LEd 276, ____ S Ct ____ (Distinct causes of action need not be presented into a single suit, although they exist at the same time and might be considered together)

State v Fotakos, SC Del 1991, 599 A2d 753 (The more secure the facility, the less need for antipsychotic medication)

State v Kepf, Neb 1990, 450 NW2d 397, 234 Neb 227 (a person cannot be punished for a belief that is profane or offensive to others)

State v Langford, 1989, 781 P2d 197, 116 Idaho, 860 (5th and 6th amendment rights of counsel and self incrimination are invoked when the person is interviewed by a mental health worker in a custodial setting)

State v Manastero, 1989, 424 NW2d 837, 228 Neb 818 (Free expression, the exchange of ideas, the communication of ideas and opinions, the dissemination of views, and the advocacy of causes are protected by the constitution)

Sterling v Environmental Control Board, 2C 1986, 793 F2d 56 (Even when the statute is legal, it is unconstitutional if it is misapplied)

Stuart v City of Philadelphia, EDPa 1982, 529 F Supp 434 (failure to remove stitches was so woefully unprofessional that it amounted to no care and treatment at all)

Supervisors v Scheidt, Md App 1990, 582 A2d 563 (when statute exceeds constitution limits to be hostile and oppressive against a person or class of people, it is unconstitutional)

Target v Levine, Md App 1991, 556 A2d 720 (Physicians past record of success and failure percentage is admissible to buttress his professional judgment argument)

Tax Analyst v US DOJ, 643 FS 740, 845 F2d 1060, 106 LEd2d 112 (Denial of information cannot be just for the convenience of the agency—and even court records are discoverable)

Taylerson v American Airlines Co., DC NY 1960, 183 F Supp 882 (even if only one allegation in the complaint is true and the others could not be proven, the complaint should not be dismissed)

Taylor v Clement, SDNY 1977, 433 F Supp 585 (merely relabeling a law to obtain the results of punishment which was not the intent of the law, such relabeling is unconstitutional for it deprives the person of a meaningful due process)

Thomas S by Brooks v Flaherty, 4C 1990 902 F2d 250 (see also 781 F2d 367, 699 F Supp 1178, 601 F Supp 1055) [The judgments of professionals are not conclusive that the judgment is prima facially constitutional, courts have authority to access that judgment]

Thomas S by Brooks v Flaherty, WDNC 1988, 699 F Supp 1178 and in *Thomas S by Brooks by Morrow*, WDNC 1984, 601 F Supp 1055, and in *Thomas S by Brooks v Morrow*, 4C 1986, 781 F2d 367 [see also 93 LEd2d 161] . . . (Whenever a professional mental health worker, or psychiatrist, or psychologist, who is employed in a government institution, modifies [or renders] a professional judgment which is made in conformity to, or in submission of, the influences, wishes, desires, and directions of the administration rather than adhering to the standards of his profession, then that professional is liable to the patient for injuries incurred)

Thomas Brooks v Flaherty, 699 F Supp 1178, 601 F Supp 1055, 781 F2d 367, 93 LEd2d 161 (one cannot treat a person arbitrarily with drugs, nor indiscriminately use drugs to control a person, nor place the person in seclusion or isolation without rigorous constitutional safeguards and the courts have required that any treatment be the least restrictive alternative available for the particular individual and his individual particular characteristics. There is a tendency among professions, in government institutions, to conform their recommendations for a program or plan of treatment and rehabilitation to the constraints of the administration imposed through threats, coercion, or intimidation rather than exercising their true professional judgment)

Thompson v Central Ohio R. Co, Ohio, 73 US 134, 6 Wall 134, 18 LEd 765 (The Constitution recognizes difference in law and equity and the equity relief in Federal courts are by common law, not be decisions of State courts) (see also *Phillips Petroleum Co v Johnson*, 7C 1946, 155 F2d 185; *Federal Deposit Ins Corp v Franchise and Manag Co, Inc*, DC Fla 1973, 354 F Supp 1016)

Tillery v Owens, 3C 1990, 907 F2d 418 (Double celling of inmates is unconstitutional given that institution is overcrowded; that violence and assaults is a continuing problem and threat, that insecurity is pervasive, that inadequate screening resulted in frequent confrontations . . . it is not necessary for the plaintiff to show that double celling itself caused increased violence, disease, and other negative conditions)

Todaro v Ward, SDNY 1977, 431 F Supp 1129 affirmed 2C 1977, 565 F2d 48 (When patient is placed under conditions which prevent a meaningful evaluation or therapy, it is unconstitutional)

Tomarkin v Ward, SDNY 1982, 534 F Supp 1224 (Courts to maintain security and discipline cannot justify excessive force . . . neither can deliberate indifference to medical needs be tolerated)

Touhy v Ragen, 7C 1950, 180 F2d 321, Affirmed 340 US 462, 95 LEd 417, 71 S Ct 416 (If government is a party in a proceedings and the records held by the government are necessary as matters of evidence, court will order the production of the information on the ground that the government has waived the confidential aspect of the records by institutional proceedings)

Toussaint v Yocky, 9C 1984, 722 F2d 1490 (Double celling unconstitutional when it engenders violence, tension and psychological problems)

Tran Van Khiem v U.S., DC App, 51 CrL 1061, (1992) (Government may forcibly medicate a person *accused* of a crime if the person is violent or presents a serious threat to security)

Trop v Dulles, 1958, 366 US 86, 2 LEd2d 630, 78 S Ct 590 (Merely relabeling or characterizing action against a person as a "treatment" does not make it *ipso facto* a treatment and the action is not shielded against judicial scrutiny)

Twist v Prarie Oil and Gas Co., , 274 US 684, 71 LEd2d 1297, 47 S Ct 755 (An action of law cannot be joined with one of equity in a Federal Court)

Tyrell v Taylor (ED Penn 1975, 394 F Supp 9 and 471 F2d 1197 and in *Tyrell v Speaker*, 3C 1976, 535 F2d 823 (The demands of due process prohibit depriving an unconvicted person of the rights shared by other citizens and one cannot confine an unconvicted person under worse conditions that convicted prisoners)

U.S. v Beyers, 1984, 740 F2d 1104 (Every individual has the right to be left alone [see *Tehan v U.S. Ex Rel Shott*, 382 US 406] The compelled psychiatric interview intruded into the privacy of a person and into the private enclaves of the personality. The psychiatrist manipulated the person to expose his inner feelings, thoughts, dreams, fantasies, anxieties, in which the conscious mind does not want to reveal and the person does not ordinarily reveal to others. The revealing of these intracies and aspects of the personality is profoundly threatening to the person and requires self incrimination protection, because the psychiatric interview goes further that a police interrogation which seek objectives facts or evidence of a crime, the psychiatric examination seeks to probe the very core of the human personality and the court must protect the patient from psychological coercion and the psychiatric interview is "inherently coercive". The psychiatrist is an extension of the government and is adversial to the patient even when he deceives the patient into a fiduciary doctor patient relationship. The psychiatrist uses trickery to gain information and slant their diagnosis to suit the government. The psychiatrists' commitment is to the institution, not to the patient. He is trained to gain the confidence and trust of the person and that trust is unwarranted and deceiving for the psychiatrist is no better that the police interrogation, but because of his professional expertise and status, the psychiatrist can more easily deceive the person because of the sociological trust people have in physicians. The psychiatrist is not impartial nor objective. He submits to institutional biases which affects his judgments, and it affects his decision, consciously or subconsciously, regarding what behavior to notice, remember, and to record. Facts are distorted by the interviewers expectations, presuppositions, sheer random errors, constraints and pressures of the government, superiors, finances, etc. The interviewer may not only misperceive a behavior, but may unintentionally cause or determine that behavior because of the interaction between the interviewer and the person being interviewed. The interviewer may follow up on certain responses and not others which are critical to a diagnosis. Same race and opposite race plays a significant role in what the interviewer perceives in the person interviewed. It is unfair to pit the word of the mental health professional against the patient when the mental health professional is more articulate in expressing concepts of thoughts, feelings, and emotions and the professional has a higher social status and credibility factor.)

U.S. v Bryant, D Minn, 3rd Div 1987, 670 F Supp 840 (Physicians of prisons owe the same duty, responsibility, and obligation of a standard of care and treatment to the involuntarily committed as he does to patients in the free world and he must use professional judgment in the diagnosis, prognosis, care, and treatment of prisoners)

U.S. v Certain Parcels of Land, DC Cal 1955, 131 F Supp 65 (Power of District Court to apply rules of equity is in Article III)

U.S. v Charters, 4C 1988, 863 F2d 302 (Judgments subject to judicial review for arbitrariness. . .when medical judgment comes in conflict with prison judgment, the purpose of institutionalization prevails as to which has authority over the other (See also *US v Watson,* 8C 1990, 893 F2d 970) 829 F2d 479; *Bee v Greaves,* 10C 1988, 863 F2d 302)

U.S. v Jenkins, 1989, 490 US 435, 104 LEd2d 487, 109 S Ct 1892 (Double Jeopardy and collateral estoppel issues fall in the 5th amendment)

•*US DOJ v Julian* (1988) 100 LEd2d 1 (records requested must be disclosed or clear reason must be stated)

US v Nobles (1975) 45 LEd2d 141 (work product doctrine immunity is not absolute)

US v Schneiderman, DC Cal 1952, 106 F Supp 731 (When documents sought are essential to a proceeding then right to those documents prevail over the government's right of confidentiality. When the government takes an action against a person the government has waived the confidentiality of the nature and the issues)

U.S. v Steil, 8C 1990, 916 F2d 485 (although 5 mental health professionals determined that patient was mentally ill and dangerous, and that the judgments were clear and convincing evidence that the person should remain in custody, it did not measure nor define mental illness or "dangerousness")

US v The Haitian Republic, , 154 US 118, 38 Led 930, 14 S Ct 992 (Separate cause of action require separate lawsuits)

U.S. v Willis, SDNY 1991, 778 F Supp 205 (Psychologist/psychiatrist has a paradigmatic fiduciary relationship and cannot use or communicate to others information obtained during course of psychotherapy)

Van Sirrs v Ciccone, 8C 1971, 437 F2d 884 (We have consistently held that the Federal Medical Centers is a part of the Federal Prison System. . . and are prisons) citing *U.S. v Mills,* 8 C 1979, 434 F2d 266

Vir Ele v Sun Ship (DC Va 1975) 68 FRD 397 (Expert opinion not immune from discovery if denial of discovery would be unfair to requesting party)

Wagner v Herman (7C 1990) 902 F2d 578 (Name of informant discoverable)

Wahad v FBI (SDNY 1990) 132 FRD 17 (name of confidential informant discoverable)

Walters v Western State Hospital, 10C 1988, 864 F2d 695 (Professional judgment is the product of professional judgment by appropriate experts applying acceptable standards in their field of expertise and the exercise of that judgment requires an individual analysis and evaluation of each separate case relevant to the specific circumstances (including the nature, gravity, and characteristics of the individual patient) and the consideration of the availability of alternative treatments together with the consideration of a lesser restrictive course of action [at footnote 3] and the rights of a patient's need not give way to the judgments of the doctors)

Washington v Harper, 1990, 494 US 210, 108 LEd2d 178, 110 S Ct 1028 (The framers of the constitution sought to protect every American in their beliefs, thoughts, emotions, and sensations, and they conferred upon them the right to be left alone, and the right to be left alone is the most comprehensive right cherished by civilized men)

Washington Post v Min (560 A2d 517) Favors disclosure even National Security information (DC app 1989)

Weinrich v Retail Credit Co, DC Pa 1960, 186 F Supp 392 (No matter how likely it may seem that a pleader will be unable to prove his case, he is entitled, upon averring a claim, to have an opportunity to try and prove it)

Wellman v Faulkner, 7C 1983, 715 F2d 269 (Double celling violates 8th Amendment)

Welsch v Likins, D Minn 4th Div 1974, 373 F Supp 487 (inadequate resources can never be an adequate justification for depriving a person of his Constitutional rights)

West v Atkins, 1988, 487 US 42, 101 LEd2d 40, 108 S Ct 2250 (A doctor is liable for the care, treatment, diagnosis of an inmate regardless if the doctor is a full time or part time employee or a contracted physician or whether he is a custodial or is supervising functions)

West v Keve, 3C 1978, 571 F2d 158 (Pain suffered while waiting for deliberately delayed surgery)

Wheeler v Glass, 7C 1973, 473 F2d 983 (Unreasonable use of restraints (handcuffs, waist chain, etc.,) violates Constitution)

White v Napoleon, 3C 1990, 897 F2d 103 (authorities may administer care and treatment upon an unwilling person only where the decision is the product of acceptable professional judgment and that judgment is not a substantial departure from acceptable professional judgments, standards, or practices and the person is liable to the patient if that judgment is not based upon responsible facts)

White Napoleon, 3C 1990, 897 F2d 103 (professional liable when he continued a medical treatment knowing that it caused pain and suffering)

White v Roper, ,1990, 901 F2d 1501 (Ordering a person to double cell with someone who is violent or potentially violent is not only punishment but indifference)

Wideman v Shallowford Community Hospital, 11 C 1987 (Free world people have no special relationship with the government and no right-duty relationship exists, but mental patients in hospitals, and prisoners in penal institutions, and others such as foster children in foster homes who have been involuntarily placed, have a fiduciary and right-duty special relationship which makes the government officials liable for violations)

Wilborn v Hutto, 8C 1975, 509 F2d 621 (Denial of medical treatment unconstitutional)

Williams v Anderson, 7C 1992, 959 F2d 1411 at 1415 (The common denominator among all the courts is that the decisions to treat a prisoner, or inmate, or patient against his will must meet the standards of professional judgment which is of standards commonly accepted by other members of that profession)

Williams v Edwards, 5C 1977, 547 F2d 1206 (relying on untrained personnel is unconstitutional)

Williams v Griffin, 4C 1991, 952 F2d 820 (Double celling is not unconstitutional per se, but if double celling increased dangerous conditions, then refusal to single cell is unprofessional judgment) See *Rhodes v Chapman*, 1981, 452 US 337, 69 LEd2d 59, 101 S Ct 2392 [see also *Cameron v Tomes*, ante supra]

William v Vincent, 6C 1974, 508 F2d 541 (Deliberate indifference constitutes a departure from sound professional judgment)

Williams v Whit[illegible]990, 897 F2d 942 (The warden of a facility can [illegible] liable for damages and for operating a pr[illegible] which he fails to properly and adequately train, supervise, and control his subordinates) Citing *Crook v Nix*, 8C 1989, 872 F2d 800

Wilson v Morris, Md App 1989, 563 A2d 392 (Breach of applicable care and established standards is unprofessional judgment)

Wilson v Morris, Md App 1989, 563 A2d 392 (acts of employees are actionable when they breach appropriate standards of medical care)

Woe v Coumo, 2C 1984, 729 F2d 96 (Treatment must fall within scope of acceptable professional judgment. . .with other cites)

Wood v Sunn, 9C 1988, 852 F2d 1205 (professional disregarded a patient's physical complaints assuming the complaints were psychological)

Wright v McMann, 2C 1972, 460 F2d 126 (Psychological isolation and seclusion rooms not to be used for disciplinary segregation or reasons)

Wyatt v Anderholt, 5C 1974, 503 F2d 1305 (Civilly committed mental patients have a constitutional right to individualized treatment which will help them to be cured, and the courts shall insure that such treatment will be implemented through judicial manageable standards. A habeas corpus action alleging mistreatment of mental patients is not adequate to provide proper relief and civil litigation is necessary for just compensation. "Treatment" means care provided by members of the mental health profession that is adequate and appropriate for the needs if the mentally impaired inmate which is also given in a humane physical and psychological environment. . .beyond the subsistence level of custodial care that is provided to convicted prisoners) citing *Donaldson v O'Conner*, 5C 1974, 493 F2d 507

Wyatt v Anderholt, 5C 1974, 503 F2d 1305 (therapy must be individualized and courts can mandate type of care and treatment)

Yako v U.S., 9C 1990, 891 F2d 738 (1.3 million dollars damages was not excessive when expert witness testified that symptoms of the condition were not consistent with the diagnosis given by the physician)

Zinermon v Buruch, Fla 1990, 494 US 113, 108 LEd2d 100, 110 S Ct 975 (Hospital employees failed to ascertain whether patient was incompetent or competent to sign forms for voluntary consent purposes)

Felder v Casey, 1988, 487 US 131, 101 LEd2d 123, 108 S Ct 2302
Department of Navy v Egan, 1988, 484 US 518, 98 LEd2d 918, 108 S Ct 818
Wilwording v Swenson, 1971, 404 US 249, 30 LEd2d 418, 92 S Ct 407
Houghton v Shafer, 1968, 392 US 369, 20 LEd2d 1319, 88 S Ct 2119
King v Smith, 1968, 392 US 309, 20 LEd2d 1118, 88 S Ct 2128
Patsy v Florida State Board of Regents, 1982, 457 US 496, 73 LEd2d 172, 102 S Ct 2557
Prieser v Rodriquez, 1973, 411 US 475, 36 LEd2d 439, 93 S Ct 1827
Britz v Theroit, 7C 1991, 940 F2d 227
Reese v Peters, 7C 1991, 926 F2d 668

Mikel v Theroit, 7C 1989, 887 F2d 733
El Rescate Legal Ser v Execu Off, 9C 1991, 941 F2d 950
Coleman v Thompson, 4C 1990, 893 F2d 139
Brown v Rison, 9C 1990, 895 F2d 533
Russels v Rolfs, 9C 1990, 893 F2d 1033
Indep School v Digre, 8C 1990, 893 F2d 987
State of NY v Sullivan, 2C 1990, 906 F2d 910
(Exhaustion of administrative remedy not required)

Teague v Lane, 1989, 489 US 288, 103 LEd2d 334, 109 S Ct 1
Castille v People, 1989, 489 US 346, 103 LEd2d 380, 109 S Ct 1060
McCarthy v Madigan, 1992, 51 CrL 208, 2083
Britz v Theroit, 7C 1991, 940 F2d 227
(Exhaustion of remedy not necessary)

Federal question cases:

Merrell Dow v Thompson, 1986, 478 US 804, 92 LEd2d 650, 106 S Ct 3229
Christensen v Colt, 1988, 486 US 800, 100 LEd2d 811, 108 S Ct 2166
Bush v Lucas, 1983, 462 US 367, 76 LEd2d 648, 103 S Ct 2404
Thurston v Jordan, 1983, 460 US 533, 75 LEd2d 260, 103 S Ct 1343
Nguyen Da Yen v Kissinger, DC Cal 1976, 70 FRD 656
Glosemeyer v Mo-Ka-Tex R & R, 8C 1989, 879 F2d 316
Preseault v ICC, 2C 1988, 853 F2d 145
Northwest v Smith, 8C 1986, 784 F2d 323
Jackson v Schoemike, 8C 1986, 788 F2d 1296

Nat Farmers v Crow Tribe, 1985, 471 US 845, 85 LEd2d 818, 105 S Ct 2447

Northeast v Teamsters, 3C 1985, 764 F2d 147

Osterer v Arnowald, DCNY 1977, 434 F Supp 379 affirmed 567 F2d 551

Tannehill v Fitzharris, 9C 1971, 451 F2d 1322

Sanders v US, 1963, 373 US 1, 10 LEd2d 148, 83 S Ct 1068

Sumner v Mata, 1981, 449 US 539, 66 LEd2d 722, 101 S Ct 764

Prieser v Rodriquez, 1973, 411 US 475, 36 LEd2d 439, 93 S Ct 1827

Troy v People of NY, 1980, 483 F Supp 235

Villereal v US, 9C 1972, 461 F2d 765

US v Donn, 9C 1982, 661 F2d 820

(doctrine of Res Judicata does not apply when the party is challenging the consititutionality of his confinement)

Fomis v Kelley, WDNY 1990, 739 F Supp 139

Doe v Angelina, ED Tex 1990, 733 F Supp 245

Gann v Schramm, DC Del 1985, 606 F Supp 1442

Barrett v US, SDNY 1986, 651 F Supp 608

Lyons v Powell, DMH 1989, 729 F Supp 1404

(Warden need not be personally involved in the violation to be liable for the violations against prisoners when they know that such a practice exists by custom, or tradition, and they fail to remedy the practice)

For the right to refuse forcibly administered anti-psychotic drugs, a review of the cases include (but is certainly not limited to):

Santana v Callazo, (1983) 714 F2d 1172

U. S. v Bryant (1987) 670 FS 840

D.C. v Mitchell (DC App 1987) 533 A2d 629 (1988), 864 F2d 695

Walters v Western State Hospital (10C 1988) 864 F2d 695

In Re Bryant (DC 1979) 403 A2d 744 (DC App 1988) 542 A2d 1216

In Re Boyd (DC App 1979) 463 A2d 744

Williams v Wilzak (Md 1990) 573 A2d 809

In Re Osborne (DC 1972) 294 A2d 372

In Re A.C. (DC App 1987) 533 A2d 611

In Re KKB (1983) 710 F2d 266

Scott v Bradford (1979) 606 F2d 534

Johnson v Silver (4C 1984) 742 F2d 823

Rennie v Klien (1978) 462 FS 1131 (1981) 653 F2d 836

Project Release v Provost (EdNY) 531 FS 1298 (2C 1983) 722 F2d 960

Donald v Matava (D Mass 1987) 668 FS 703

Winters v Miller (2C 1971) 446 F2d 65

Knect v Gillman (8C 1973) 488 F2d 1136

Rogers v Okin (1C 1980) 634 F2d 650 (DC Mass 1979) 478 F2d 1342

Bee v Greaves (1984) 744 F2d 1387

Dautermount v Broadlawn (8C 1987) 827 F2d 291

Mackey v Procunier, 9C 1973, 477 F2d 877

Souder v Mcguire, Md Pa 1979, 423 F Supp 830

Riese v St Marys, 1988, 196 Cal Apprt 3d 1388, 243 Cal Rptr 241

In Re KKB, 1980, 609 P2d 747

Superintendent v Saikewiez, 1977, 373 Mass 728, 370 NE2d 417

Gorman v Univ, 1986, 646 F Supp 799, 837 F2d 1 (1C 1988)

Aden v Younger, 1976, 57 Cal Rptr 3d 662, 129 Cal Rptr 535

US v Charters (4C 1987) 829 F2d 479

Shields v Burge (7C 1989) 874 F2d 1201

Battle v Central State (11 C 1990) 898 F2d 126
US v Watson (8C 1990) 898 F2d 102, 970
Davis v Hubbard (ND Ohio WD 1980) 506 FS 915
Andrews v Ballard (1980) 498 FS 1038
Doe v Gallinot (1980) 486 FS 983 (9C 1981) 657 F2d 1017
Nelson v Heyne (7C 1974) 491 F2d 312 (1972) 355 FS 451
Mills v Rogers v Okin, 634 F2d 653, 457 US 291, 73 LEd2d 2216, 102 SC 2442
Youngberg v Romeo (1982) 457 US 307, 73 LEd2d 28, 102 SC 2452
Stanley v Georgia (1969) 394 US 537, 22 LEd2d 542, 89 SC 2452
Washington v Harper (1990) 494 US 210, 108 LEd2d 178, 110 SC 1028
Vitek v Jones (1980) 445 US 439, 63 LEd2d 552, 100 SC 1254
Mackey v Procunier (9C 1973) 477 F2d 877
Pens v NYS Div (SNY 1976) 419 FS 203
Schemer v California (1966) 384 US 757, 16 LEd2d 908, 86 SC 1866
Greason v Kempt (11C 1990) 891 F2d 829
Waltrop v Evans (11C 1989) 871 F2d 1030
Robbin-French v Budke (DNM 1990) 739 FS 1479
US v Cohen (1984) 733 F2d 128 and the many cites therein
Smith v US (1974) 502 F2d 512
Whalen v Roe (1977) 429 US 589, 51 LEd2d 64, 97 SC 869

Cases on double celling of inmates:

Rhodes v Chapman, 1981, 452 US 337, 101 SC 2392
Huto v Finney, 1978, 437 US 678, 98 SC 2656
French v Owens, SD Ind 1982, 538 F Sup 910
Burks v Walsh, WD Mo 1978, 461 F Supp 452
Burks v Teasdale, 8C 1979, 603 F2d 59

Glover v Johnson, ED Mich 1979, 478 F Supp 1075
Palmigiano v Garrathy, DRI 1977, 443 ES 956
Ruiz v Estelle, 5C 1982, 679 F2d 1115
Ramos v Lamm, 10C 1098, 639 F2d 559
McMurray v Phelps, WD La 1982, 533 F Supp 742
Dawson v Kendrick, SD W Va 1981, 567 F Supp 1252
Hutchings v Corum, WD Mo 1980, 501 F Supp 1276
Hartman v Gabriel, WD Mo 1981, 524 F Supp 622
Jordan v Arnold, Md Pa 1969, 472 F Supp 265
Jones v Diamond, 5C 1981, 636 F2d 1364
Blake v Hall, 1C 1981, 668 F2d 52
Newman v State of Alabama. 5C 1977, 599 F2d 283
Finney v Arkansas Bd of Corrections, 8C 1974, 505 F2d 194
Miller v Carlson, MD Fla 1975, 401 F Supp 835
Taylor v Sterrett, ND Tex 1972, 344 F Supp 411

Rosheisen v Steele, 193 F2d 273
Garcia v Steele, 193 F2d 176

(Federal Medical Centers are Federal Prisons established by 46 Stat 270, 5-13-30 for the care and treatment of Convicted prisoners who become mentally ill during their sentence or who require special medical care)

Howe v Smith, 1981, 452 US 473, 69 LEd2d 171, 101 S Ct 2468 and 480 F Supp 111 and at 625 F2d 454
Lono v Fenton, 1978, 581 F2d 645
Anthony v Wilkerson, 1980, 637 F2d 1130

(A person cannot be imprisoned in a penal or correctional institution and be treated as a convicted prisoner without statutory authority)

U S v Ecker, 1976, 177 US App DC 31, 543 F2d 178

Lake v Cameron, 1966, 124 DC App 264, 364 F2d 657
Bolton v Harris,

> (The doctor and the patient Together determines what treatment is to be made and the conditions of the treatment program)

The courts have ruled that a psychological impairment qualifies as a medical need (*Bouring v Godwin*, 4C 1977, 551 F2d 44; *Partridge v 2 Unknown Police Officers*, 5C 1986, 791 F2d 1182; *Greason v Kemp*, 11C 1990, 891 F2d 1182) and the courts have reaffirmed their positions that whenever a public official takes a person into custody, for either a criminal, civil, or regulatory reason, then the officials have an affirmative duty and obligation to use their best professional judgment in the care and treatment of a person in their custody (*Buffington v Baltimore County*, 4C 1990, 913 F2d 113).

Cohen v California, , 403 US 15, 29 LEd2d 284, 91 S Ct 1780
Coates v City of Cincinnati, , 402 US 611, 29 LEd2d 214, 91 S Ct 1686
Stree v NY, , 394 US 576, 22 LEd2d 572, 89 S Ct 1344
U S Dept of Agri v Moreno, , 413 US 528, 37 LEd2d 782, 93 S Ct 2281

> (Mere public intolerance or animosity cannot constitutionally justify the deprivation of a persons' liberty)

Boddie v Connecticut, , 410 US 379, 28 LEd2d 113, 91 S Ct 780
Cantwell v Connecticut, , 310 US 296, 84 LEd2d 1213, 60 S Ct 146
Sherbert v Verner, 374 US 398, 10 LEd2d 965, 83 S Ct 1780

Bates v Little Rock, , 361 US 516, 4 LEd2d 480, 80 S Ct 412

(A statute may be held invalid when it operates to deprive an individual of a constitutionally protected right even though the statutes validity is beyond question)

Jackson v Indiana, 1972, 406 US 715, 32 LEd2d 435, 92 S Ct 1845
U.S. v Wood, 5C 1972, 469 F2d 676
Henry v Ciccone, 8C 1971, 440 F2 1052 (F Supp)
Drendel v US, 4C 1968, 403 F2d 55
U S v Curray, 4C 1969, 410 F2d 1372
U S v Purdue, Conn 1973, 354 F Supp 1337
Cook v Ciccone, WD Mo 1970, 312 F Supp 822
U S v Jackson, ND Cal 1969, 306 F Supp 4
Royal v Settle, WD Mo 1959, 192 F Supp 176
Wright v Settle, WD Mo 1954, 125 F Supp 1
U S v Biedler, WD Mo 1976, 417 F Supp 608

(Mental Health statutes have many constitutional deficiencies and a cursory review reveals that congress failed to establish proper and adequate provisions for the mentally ill. The commitment statutes are unconstitutional)

McKiner v PA, , 403 US 528, 29 LEd2d 647, 91 S Ct 1976
SAS v Maryland, 4C 1964, 334 F2d 506

(The main purpose of committing the insanity acquittee is for treatment and not punishment and merely substituting a procedure as "treatment" and not punishment does not spare it from a constitutional challenge. Treatment that is unnecessary and excessive is punishment)

Rogers v Okins, 1C 1980, 634 F2d 650

Mills v Rogers, 1982, 457 US 291, 73 LEd2d 16, 102 S Ct 2442

(Civil Commitments have right to refuse antipsychotic medication)

Inmates of Allegheny Co Jail v Pierce, 3C 1979, 612 F2d 754
Cruz v Ward, 2 C 1977, 558 F2d 638
Robert E. v Lane, N D Ill 1981, 530 F Supp 930
Griffin v Smith, WDNY 1980, 493 F Supp 129
Kendrick v Bland, WD Ky 1981, 541 F Supp 896
Ruiz v Estelle, SD Tex 1980, 503 F Supp 1265, 5C 1982, 679 F2d 1115
Feliciano v Barcelona, DPR 1979, 497 F Supp 14
(Denial of proper and adequate Psychological care & treatment Use of Disciplinary Segregation to house mentally ill)

APPENDIX E—Code of Professional Ethics Information

Sworn Affidavit of Attorney Advisor Lisa Sauderman:

> ". . . he was placed in a semi-locked ward . . . and was not entitled to a notice, a hearing, witnesses, or presentation of evidence."

Sworn statement of U.S. Attorney Siekert:

> ". . . the federal medical centers is a fully accredited general acute care hospital."

Statement of Hospital Accreditation Board:

> ". . . we have not accredited the federal medical centers."**

Sworn Affidavit of Dr. Walter Kuckes:

> ". . . I have not tried to forcibly medicate Mr. Phelps . . ."

Sworn Affidavit (and open court testimony) of Dr. Norton:

> ". . . Mr. Phelps was prescribed psychotropic medication by Dr. Kuckes, but Mr. Phelps has continuously refused to take the medication . . .

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*The director of Health and Human Service asserted that the Federal Medical Centers are not certified past general hospitals nor after care facilities and do not meet the standards required by the American Correctional Accreditation Board.

> ". . . I have personally reviewed the medical records of Mr. Phelps and the record reveals that Mr. Phelps was given psychotropic medication in the past and tolerated the medication well without any side effects or adverse reactions."

Sworn Testimony of Dr. David Myrad (in open court):

> ". . . Mr. Phelps was prescribed psychotropic medication and suffered severe adverse side effects from the drugs. We discontinued the medication immediately, and after he recovered we realized that he did not need medication . . . and probably never did . . . I have personal knowledge of the incident . . . and I read it from the medical records . . ."

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